

**PLAINTIFFS
EXHIBIT**

5

DEPOSITION OF KIRK LAMBERTH

November 15, 2006

Pages 1 through 135

**CONDENSED TRANSCRIPT AND CONCORDANCE
PREPARED BY:**

Haislip, Ragan, Green, Starkie & Watson, P.C.

566 South Perry Street

Post Office Box 62

Montgomery, AL 36104

Phone: (334) 263-4455

Fax: (334) 263-9167

E-mail: haislipragan@charter.net

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JANICE McCOLLUM,

Plaintiff,

Vs. CIVIL ACTION NO.
05-cv-0326-W

Amtren, Inc.,

Defendant

DEPOSITION OF KIRK LAMBERTH, taken

pursuant to stipulation and agreement before

Patricia G. Starkie, Registered Diplomat Reporter,

CRR, and Commissioner for the State of Alabama at

Large, in the Law Offices of Slatten & O'Connor, 105

Tallapoosa Street, Montgomery, Alabama, on

Wednesday, November 15, 2006, commencing at

approximately 10:05 a.m.

Page 2

APPEARANCES

FOR THE PLAINTIFF:

Mr. Jimmy D. Jacobs
Attorney at Law
143 Eastern Boulevard
Montgomery, Alabama

FOR THE DEFENDANT:

Mr. G. R. "Rick" Trawick
SLATTEN & O'CONNOR
Attorneys at Law
105 Tallapoosa Street
Montgomery, Alabama

ALSO PRESENT:

Ms. McCollum

EXAMINATION INDEX
KIRK LAMBERTH

BY MR. JACOBS 5

BY MR. TRAWICK 118

Page 3

EXHIBIT INDEX

PLAINTIFF'S EXHIBITS

1	Amtren's responses to Plaintiff's	28
	discovery requests	
2	Five-page letter to the EEOC from Mr.	57
	Lamberth	
3	Attachment to PX-2 relating to item five	58
	(bank overdrafts)	
4	Attachment to PX-2 relating to item two	80
	(health insurance premium payments)	
5	Attachment to PX-2 relating to item one	91
	(Late Payroll Tax Deposits)	
6	Attachment to PX-2 relating to item	93
	three (Credit Card Processor	
	Cancellation due to lack of payment)	
7	Attachment to PX-2 relating to item four	93
	(Lease of Copier)	
8	Form 941 - penalty and interest (Also	108
	marked DX-5 to McCollum deposition)	

STIPULATION

It is hereby stipulated and agreed by and
between counsel representing the parties that the
deposition of:

KIRK LAMBERTH

is taken pursuant to the Federal Rules of Civil

Page 4

Procedure and that said deposition may be taken
before Patricia G. Starkie, Registered Diplomat
Reporter, CRR, and Commissioner for the State of
Alabama at Large, without the formality of a
commission;

That objections to questions other than
objections as to the form of the question need not
be made at this time but may be reserved for a
ruling at such time as the said deposition may be
offered in evidence or used for any other purpose
by either party provided for by the Statute.

It is further stipulated and agreed by and
between counsel representing the parties in this
case that the filing of said deposition is hereby
waived and may be introduced at the trial of this
case or used in any other manner by either party
hereto provided for by the Statute regardless of
the waiving of the filing of the same.

It is further stipulated and agreed by and
between the parties hereto and the witness that the
signature of the witness to this deposition is
hereby waived.

Page 5	Page 7
<p>1 KIRK LAMBERTH</p> <p>2 The witness, after having first been duly</p> <p>3 sworn to speak the truth, the whole truth and</p> <p>4 nothing but the truth testified as follows:</p> <p>5 EXAMINATION</p> <p>6 BY MR. JACOBS:</p> <p>7 Q. Mr. Lamberth, we met earlier when your</p> <p>8 attorney took Ms. McCollum's deposition. I</p> <p>9 know that you are familiar with the</p> <p>10 process. Have you ever given a deposition</p> <p>11 before today?</p> <p>12 A. No.</p> <p>13 Q. Have you ever participated in a deposition</p> <p>14 before the one --</p> <p>15 A. In writing, years ago. I did do that. But</p> <p>16 the way that worked, they submitted</p> <p>17 something, we reviewed it and sent it back.</p> <p>18 Q. Okay. Was that in connection with your</p> <p>19 employment?</p> <p>20 A. No, it was a former employer.</p> <p>21 Q. I'm sorry?</p> <p>22 A. A former employer of mine.</p> <p>23 Q. Okay. Well, that's really what I meant,</p>	<p>1 Q. That's my home town, so I have a little</p> <p>2 familiarity with that plant and what they</p> <p>3 did years ago. I thought it had to do with</p> <p>4 manufacture of tape.</p> <p>5 What is your position with Amtren?</p> <p>6 A. I am the president.</p> <p>7 Q. Okay. Is Amtren a public corporation?</p> <p>8 A. No, it is not.</p> <p>9 Q. All right. Are you the sole owner?</p> <p>10 A. Yes.</p> <p>11 Q. When was the company begun?</p> <p>12 A. Amtren Corporation was -- the company was</p> <p>13 incorporated in 1995. There was a</p> <p>14 three-year period where we were another</p> <p>15 entity. So 1992 was when I founded the</p> <p>16 basic company. From 1992 to 1995 we</p> <p>17 operated under another company name because</p> <p>18 we were on a different path. In 1995 we</p> <p>19 changed direction, and basically we</p> <p>20 separated the two -- there were two groups</p> <p>21 at that time, and we separated them, and I</p> <p>22 took product development. The name Amtren</p> <p>23 was developed and we incorporated in</p>
Page 6	Page 8
<p>1 was it in connection with your employment.</p> <p>2 Who was that --</p> <p>3 A. That was with Sony Corporation.</p> <p>4 Q. Sony?</p> <p>5 A. S-O-N-Y, yes. Sony.</p> <p>6 Q. And when were you employed with Sony?</p> <p>7 A. The years were 1986 to 1992, I think were</p> <p>8 the dates.</p> <p>9 Q. Okay. Were you employed in Dothan?</p> <p>10 A. Yes, I was, uh-huh (positive response).</p> <p>11 Q. What was your position with the company?</p> <p>12 A. At Sony I was there -- there were several</p> <p>13 positions. The last position?</p> <p>14 Q. Yes, that would be fine.</p> <p>15 A. I was director of engineering for a</p> <p>16 division.</p> <p>17 Q. And I have a feeling that I know what that</p> <p>18 plant does, but what -- do they make tapes?</p> <p>19 A. Manufactured videotapes and computer</p> <p>20 disks. It was called the floppy disk. It</p> <p>21 was a three and a half inch. That's the</p> <p>22 two areas they produced or the two</p> <p>23 products.</p>	<p>1 October of -- I believe it was in '95 as</p> <p>2 Amtren.</p> <p>3 Q. All right. So Amtren as a business entity</p> <p>4 came into being in 1995?</p> <p>5 A. 1995, correct.</p> <p>6 Q. Okay. And it grew out of another entity --</p> <p>7 A. It did.</p> <p>8 Q. -- that was prior to that?</p> <p>9 A. It did.</p> <p>10 Q. Does that other entity still function?</p> <p>11 A. No, it does not.</p> <p>12 Q. Could you tell me what Amtren does.</p> <p>13 A. Amtren is classified as a manufacturer in</p> <p>14 that we manufacture CD and DVD duplication</p> <p>15 systems.</p> <p>16 Q. Okay. And I'm going to try to explain that</p> <p>17 to you, and if you would, tell me if I</p> <p>18 understand it.</p> <p>19 A. All right.</p> <p>20 Q. You would manufacture machines that would</p> <p>21 make multiple copies of an original, either</p> <p>22 data or music or whatever?</p> <p>23 A. Yes. It is -- that's exactly right. The</p>

Page 9	Page 11
<p>1 exception is you can also take straight 2 from your PC the information. So you can 3 bring an original work into the machine 4 like a xerox -- like a photocopy, and you 5 can also submit work to it from your PC. 6 Q. If a friend of mine recorded a CD or what 7 we used to call an album and had a master, 8 then you would manufacture machines that 9 could reproduce that, the copies that could 10 be sold? 11 A. Right. 12 Q. Is that right? 13 A. That is exactly right. 14 Q. Okay. That's what I thought it was, but I 15 wanted to be sure. 16 What raw inputs are necessary for 17 Amtren to operate? 18 A. Raw inputs would be -- there would be -- 19 depending on the area, of course, there 20 would be -- 21 And let me clarify raw. You mean like 22 reporting, weekly reporting, this kind 23 of -- you mean --</p>	<p>1 Q. What kind of board? 2 A. The PC -- the circuit boards. 3 Q. Okay. I'm sorry. 4 A. Circuit boards, the internal controllers. 5 Q. Okay. Are there any soft materials that 6 you have to have in order to produce your 7 product? 8 A. Can you explain soft, make sure -- 9 Q. Yes. I was hoping that that would explain 10 it. Are there any processes or software 11 that you would have to purchase or lease or 12 whatever in addition to raw materials? 13 A. For the product itself? 14 Q. Yes. 15 A. Primarily for the product? 16 Q. For you to produce the product that you 17 then sell. 18 A. Two things I want to clarify. We actually 19 purchase software as a material for our 20 product. 21 Q. Okay. 22 A. That's different. We don't -- we just -- 23 if I can, it's XP, Windows XP. It goes</p>
Page 10	Page 12
<p>1 Q. No. Really, what I mean is what sort of 2 supplies -- or perhaps you could just 3 describe suppliers that you would have to 4 have in order to -- 5 A. Can I say materials? 6 Q. Yes. 7 A. Do you mean materials? 8 Q. Materials, yeah. 9 A. All right. Materials are provided -- and 10 there are probably three categories of 11 materials. The materials are purchased 12 parts, which would be items that are 13 specified from, you know, certain vendors 14 and purchased. 15 Then there would be parts that would be 16 built from vendors to our specifications. 17 Those could be sheet metal or plastic, 18 molded parts. 19 The third is usually PC boards and 20 those type. Those are also designed and 21 built to our specifications and populated. 22 Q. And what was the last thing you said? 23 A. That's pretty much it.</p>	<p>1 with our systems. There's an option to 2 provide -- that we provide the operating 3 system. That's a material. 4 Now, is that related -- are you 5 asking -- or software related to 6 running the app? 7 Q. Yes. Is there any software that you have 8 to have or other processes that you have to 9 lease or license in order to produce what 10 you produce? And I would assume Windows XP 11 would be one of those things, because you 12 put it in the machine. 13 A. Right. 14 Q. As a raw material. 15 A. Not have to, but, yes, we do -- we do elect 16 to use certain packages to -- and I guess 17 it's probably because it's more required 18 for business operations than anything 19 else. So we do, you know, use a couple -- 20 primarily we use I would say probably a 21 couple of packages. Couple of them are the 22 Microsoft Office type packages, and the 23 other would be an accounting package.</p>

Page 13

1 Q. And we're going to talk I'm sure this
2 morning some about Peachtree and the
3 MAS90. And I'm not sure that's how y'all
4 pronounce it, but that's --
5 A. Well, that's right. Those two are the way
6 we refer to those.
7 Q. Over on the production side, it would be
8 the Microsoft Office type application?
9 A. Exactly.
10 Q. And then I would assume for your internal
11 business operations, you're also using
12 something like Microsoft Office or
13 Enterprise or something of that nature?
14 A. Generally Office, just the Excel and Word
15 documents within Office.
16 Q. Okay. What is your -- taking '95 as a
17 baseline, what has been your rate of growth
18 in production?
19 A. Dollars or volume?
20 Q. Either one.
21 A. I'll have to think a minute about that. I
22 can say it's been substantial. For a
23 period -- if I can just use a couple of

Page 14

1 periods here. From '95 through '98,
2 minimal growth.
3 Q. Okay.
4 A. '98 to 2001, significant, you know, sharp
5 growth. So from '98 to 2001, it was
6 substantial growth, a lot more than before.
7 Q. Are you talking about 25 percent a year or
8 more growth?
9 A. Let me think just a minute. So I've got --
10 Not quite that sharp during those periods.
11 Cumulative yes, probably for that period.
12 Cumulative. Probably from '98 to '01, it
13 probably could be 25 percent; maybe as much
14 as 35 percent.
15 Q. Okay.
16 A. Maybe on an annual basis, that would be ten
17 or so, 15.
18 From '02 to the current, we've had
19 substantial growth.
20 Q. Better than 50 percent?
21 A. Probably 25 per year.
22 Q. Okay.
23 A. I'm not sure how that relates totally.

Page 15

1 Now, we slowed down a little bit in the
2 last two years, though, so I would say that
3 you probably are talking about 30 to 40
4 percent growth per year.
5 Then in 2005, we slowed down
6 substantially, and we've -- so the end of
7 2005 is probably flat compared to previous
8 years. 2006 is picking back up some.
9 Q. Was there any external cause of that 2005
10 slow down, something in the industry?
11 A. It was primarily the -- there were a couple
12 of reasons. The most significant was
13 delayed release of a planned product.
14 We had planned a product release for
15 2004 and 2005. It was delayed. This delay
16 caused that.
17 Q. Was there any particular cause for the
18 delay?
19 A. No single cause.
20 Q. Okay. Were there more than three causes?
21 A. Yes. There -- to try to clarify that.
22 When you release a new product -- we have
23 not released a new product since 2001.

Page 16

1 There were a lot of areas that we had
2 planned well to do that were not executed.
3 There are probably three categories. A
4 couple that I would mention would be the
5 proper execution of material changeover.
6 You have an old model to a new model. So
7 you have to plan the materials that will
8 not be used from the old model to be --
9 reduce the inventory. Then you have to
10 plan the materials for the new model, and
11 you have a changeover plan. That's kind of
12 an operational mode.
13 Then the other item is the design, that
14 the designers do, our R&D people. So a
15 secondary item that relates to this is that
16 when you release a new revision, some of
17 the designs are not fully complete, so it
18 takes additional time to work out some of
19 the -- I may call them bugs. It's not
20 software only, but it's sometimes the
21 hardware doesn't fit right. So I would say
22 it's probably a combination of the two
23 items.

Page 17

- 1 Q. Okay. Has that product now been released?
- 2 A. Yes, it has.
- 3 Q. And you are back on track with the
- 4 substantial growth?
- 5 A. Yes, we are. This year we would -- the
- 6 product was formally released last
- 7 November. That would be -- let's see.
- 8 We're in '06, so that would be November of
- 9 '05. And it is -- I would say it's --
- 10 we've experienced 30 to 40 percent growth
- 11 in that product this year.
- 12 Q. How many people are employed by Amtren?
- 13 A. I was going to count them this morning. I
- 14 forgot. I don't know the whole number.
- 15 MR. TRAWICK: Are you asking
- 16 today?
- 17 A. Today?
- 18 Q. I was asking generally today, but we can go
- 19 back specifically.
- 20 A. Can I use a rough number?
- 21 Q. Sure.
- 22 A. I think it's about 20. I'm not...
- 23 Q. And is that more or less than when Janice

Page 18

- 1 was employed there, that 20?
- 2 A. I think it's less, but I'd have to verify
- 3 that. I can't remember exactly the
- 4 number. Now, I am using full time, but on
- 5 occasion we do use contractors or
- 6 temporary. And that's what -- your
- 7 question --
- 8 Q. Was to full-time employees.
- 9 A. Right.
- 10 Q. In breaking down that roughly 20 -- and I'm
- 11 not going to hold you to that number --
- 12 about how many are engineers?
- 13 A. Twenty-five percent roughly. I think four
- 14 operate in that department completely, so
- 15 it would be a little less than 25.
- 16 Q. Are the engineers responsible for inventory
- 17 control and production?
- 18 A. Not responsible for it.
- 19 Q. Okay. How many people would be involved in
- 20 inventory control?
- 21 A. One person.
- 22 Q. One person?
- 23 A. Yes.

Page 19

- 1 Q. Purchasing?
- 2 A. Purchasing, same person.
- 3 Q. Same person?
- 4 A. Yes.
- 5 Q. Do you have a separate shipping department?
- 6 A. We do not have a shipping department. It's
- 7 usually a shared duty.
- 8 Q. Okay. Would the person who also does
- 9 inventory and purchasing do shipping as
- 10 well?
- 11 A. Yes.
- 12 Q. Who else would be involved in shipping by
- 13 position or title, not by name?
- 14 A. What happens now is generally we pull from
- 15 the management staff when we need it for
- 16 that. If there's a shipment going out,
- 17 generally there's -- including myself, if
- 18 needed, and others will just assist with
- 19 the shipping of the product.
- 20 The primary person that's mentioned,
- 21 the inventory and logistics person,
- 22 prepares the shipment as far as they can,
- 23 and then we have additional people that

Page 20

- 1 will help with the finalization of it.
- 2 It's not assigned specifically. It's
- 3 usually as we can -- you know, as we can
- 4 find people.
- 5 Q. What is your primary product now that you
- 6 sell?
- 7 A. It's the CD and DVD duplicator.
- 8 Q. Since I have never seen one of those, is
- 9 that larger than a kitchen microwave?
- 10 A. Yes. There's three levels of the product.
- 11 One is the level that is under two
- 12 thousand. It would probably be smaller
- 13 than that. It would be similar to -- maybe
- 14 similar to a microwave.
- 15 Q. Okay.
- 16 A. Then the levels -- two levels above that
- 17 are substantially larger. They would be
- 18 similar to your office copier without the
- 19 stand. They would be 45 to 50 pounds.
- 20 Q. And you have a staff that actually
- 21 manufactures those?
- 22 A. Yes, we do.
- 23 Q. How many people are involved in

Page 21

1 manufacture?

2 A. Let me count, because I want to try -- I'm

3 not going -- again, I'm going to use a

4 number that I just -- I think it's going to

5 be six or seven.

6 Q. Okay. Now, do the engineers do any of the

7 manufacturing work?

8 A. Their responsibility does not do that, but

9 they do assist from time to time.

10 Q. Okay. And to sort of get a picture in my

11 head, once a unit is produced, I would

12 assume it's boxed somehow, and your

13 manufacturing people would do that and move

14 it to some location to be sold?

15 A. We have an assembly line process. At the

16 end of the line it's quality checked, and

17 then it goes into a carton and is closed

18 up, yes.

19 Q. How many people are currently involved in

20 management with Amtren?

21 A. Currently? Five. Let me count...

22 MR. TRAWICK: To keep from

23 confusing the court reporter,

Page 22

1 if you verbalize your

2 thoughts, she takes it down.

3 THE WITNESS: Sorry about that.

4 My apologies.

5 A. I'm going to say five.

6 Q. Okay. And I'm assuming that you are one of

7 those?

8 A. Yes, that's correct.

9 Q. You are the president and CEO?

10 A. That's correct.

11 Q. Who are the other four?

12 A. By name, Bobby Lake, Susan Seeber, Derrick

13 Garrett --

14 Q. Derrick?

15 A. D-E-R-R-I-C-K, Garrett, G-A-R-R-E-T-T, and

16 Michael Rogers.

17 Q. What is Bobby Lake's title?

18 A. His title is general manager. There's a

19 secondary title with that, too, controller.

20 Q. Is Susan Seeber --

21 A. Seeber.

22 Q. Seeber?

23 A. Yes, uh-huh (positive response).

Page 23

1 Q. What's her title?

2 A. Accounting manager.

3 Let me clarify that. It's accounting

4 and business management.

5 Q. And Derrick Garrett?

6 A. Service manager.

7 Q. And Michael Rogers?

8 A. He's the logistics and inventory manager.

9 Q. Is he that person that we were talking

10 about that would purchase and --

11 A. Exactly.

12 Q. -- do inventory control and so on?

13 A. Yes.

14 Q. Okay. And typically service manager to me

15 means something in a retail setting, but

16 what does your service manager do?

17 A. Our service manager receives calls from the

18 customer. He manages a small group,

19 there's only two in it, but they're the

20 calls that come in from the customer with

21 issues regarding the systems.

22 Q. Okay.

23 A. Questions that -- you know, it's service

Page 24

1 calls similar to if you would call a

2 manufacturer for help with a product.

3 Q. And the accounting manager?

4 A. Susan?

5 Q. Yes.

6 A. What was your question?

7 Q. What specifically does she do?

8 A. Susan is responsible for the accounts

9 payable, the accounts receivable, the

10 basically matching the purchase orders with

11 the packing lists. I would say primarily

12 any accounting duty up and to the

13 production of -- in fact, I guess all

14 accounting areas. She also manages the

15 front office, too, anybody in the front

16 office.

17 Q. Okay. Does she do like monthly income

18 statements?

19 A. Yes, she does.

20 Q. Financial statements for the end of the

21 year?

22 A. Yes, she does. Those are nonaudited, just

23 output type reports. And she does,

Page 25

1 actually, some of them weekly.
 2 Q. Okay. Is she also responsible for writing
 3 checks?
 4 A. Yes, she is.
 5 Q. Making payments to Blue Cross Blue Shield?
 6 A. Yes, she is.
 7 Q. And tax payments?
 8 A. Yes, she is.
 9 Q. Is she a CPA?
 10 A. No, she is not.
 11 Q. To try to shorten things a little bit, I'm
 12 going to say I think the general manager is
 13 responsible for everything; is that right?
 14 A. The general manager in the role is -- yes,
 15 operations and -- I call it the front
 16 office, if you will. It would be the
 17 service and the purchasing and the
 18 accounting areas, yes.
 19 Q. Okay.
 20 A. I think that's correct.
 21 Q. And how is that role different from that of
 22 controller?
 23 A. The controller title in Mr. Lake's

Page 26

1 situation is because he is the CPA, and he
 2 does review our accounting output; thus,
 3 the title is, if you will, a co-title to
 4 allow that role to be a double check for
 5 the accounting system.
 6 Q. Okay. When was Bobby Lake employed as
 7 general manager and/or controller?
 8 A. I believe the dates are somewhere -- we can
 9 verify this. It would be January or
 10 February of this year. We can verify the
 11 exact date if you want to. I do know it
 12 was the beginning of this year.
 13 Q. Okay. How about Susan Seeber?
 14 A. I believe her role -- it would be in the
 15 fall of last year. It would be somewhere
 16 around October -- again -- September,
 17 October, I believe.
 18 Q. Was Susan Seeber hired into the position of
 19 accounting manager or --
 20 A. Yes, she was.
 21 Q. Okay. And I want to ask the same question
 22 about Bobby Lake. Was he hired as general
 23 manager or did he have some other position

Page 27

1 before that?
 2 A. No, he was hired in as general manager.
 3 Q. Okay. What about Derrick Garrett? How
 4 long has he been with you?
 5 A. Again, I'm going to estimate 2003. Late
 6 2003, early 2004.
 7 Q. And Michael Rogers?
 8 A. Spring of 2006. Exact month, I would
 9 estimate May.
 10 Q. Who did Mr. Rogers replace?
 11 A. At the time of his employment?
 12 Q. Yes.
 13 A. Wayne Crabtree.
 14 Q. And who did Derrick Garrett replace?
 15 A. The position did not -- it's a growth
 16 position. It did not exist.
 17 Q. New position?
 18 A. Yes.
 19 Q. And whom did Susan Seeber replace?
 20 A. Lisa McNamee.
 21 Q. And Bobby Lake?
 22 A. New position.
 23 Q. Do you recall the date that Janice McCollum

Page 28

1 was initially employed?
 2 A. The dates of her employment?
 3 Q. Yes.
 4 A. January of 2004 through April of 2005.
 5 Q. Okay. Who was responsible for hiring her?
 6 A. I was.
 7 (Plaintiff's Exhibit I was marked
 8 for identification.)
 9 Q. If you would look at -- I'll represent to
 10 you this is Amtren's responses to
 11 Ms. McCollum's discovery requests. Have
 12 you ever signed a copy of this?
 13 MR. TRAWICK: Yes.
 14 A. Yes.
 15 MR. TRAWICK: We can get you a
 16 signed copy.
 17 MR. JACOBS: I'm not sure that I
 18 have one.
 19 MR. TRAWICK: My recollection is
 20 we sent this to you and told
 21 you we would supplement with a
 22 signed copy.
 23 MR. JACOBS: That you would get a

Page 29	Page 31
<p>1 signed copy? All right.</p> <p>2 Q. If you would look at the response to number</p> <p>3 two, I asked for some information regarding</p> <p>4 Ms. McCollum's pay.</p> <p>5 A. Okay.</p> <p>6 Q. And the response that her pay was 60,000,</p> <p>7 was that salary?</p> <p>8 A. To the best of my knowledge, that was her</p> <p>9 salary. Again, I --</p> <p>10 Q. Was that her initial pay when she was hired?</p> <p>11 A. No, it was not.</p> <p>12 Q. What was she hired at, what rate of pay?</p> <p>13 A. I'm going to give a range. I'm not sure of</p> <p>14 an exact number. I think it was somewhere</p> <p>15 around 40, 45,000. I don't know exactly,</p> <p>16 but in that range.</p> <p>17 Q. Was there a specific formula or ratio of</p> <p>18 any kind that was attached to her position</p> <p>19 in terms of a bonus?</p> <p>20 A. The bonus for that period or --</p> <p>21 Explain that a little bit further.</p> <p>22 Q. She was basically employed for a year.</p> <p>23 A. Uh-huh (positive response).</p>	<p>1 Generally the management staff receives a</p> <p>2 general -- similar amount, and the</p> <p>3 production workers receive a lesser but</p> <p>4 similar amount.</p> <p>5 Q. Similar amount? Okay. Is that amount at</p> <p>6 the end of a year entirely discretionary</p> <p>7 with you?</p> <p>8 A. Yes, it is.</p> <p>9 Q. Okay. Did Ms. McCollum's position carry</p> <p>10 with it the payment of any insurance</p> <p>11 benefits, health insurance or life</p> <p>12 insurance?</p> <p>13 A. I can't remember specifically her scenario,</p> <p>14 but we do pay health insurance, a part of</p> <p>15 the premium for health insurance, and</p> <p>16 provide -- I don't think at that time we</p> <p>17 provided life insurance. But I do know</p> <p>18 that if an employee elects to be part of</p> <p>19 it, then the premium for the employee is</p> <p>20 matched, and we do provide that.</p> <p>21 Q. Okay. How about any type of 401(k) plan or</p> <p>22 retirement plan?</p> <p>23 MR. TRAWICK: You're asking for</p>
Page 30	Page 32
<p>1 Q. And I note in the response that she got a</p> <p>2 \$10,000 bonus.</p> <p>3 A. Uh-huh (positive response).</p> <p>4 Q. And what I'm trying to find out, what I'm</p> <p>5 trying to ask and not doing it very well, I</p> <p>6 suppose, is was her bonus set up according</p> <p>7 to some formula as a percentage of sales</p> <p>8 or -- how was it arrived at?</p> <p>9 A. The bonus is a merit bonus, and it's -- the</p> <p>10 bonus that you're discussing --</p> <p>11 If it's the \$10,000 bonus, then I can</p> <p>12 explain a little bit.</p> <p>13 Q. Right.</p> <p>14 A. That's a merit bonus. At the end of each</p> <p>15 year, based on the company's performance,</p> <p>16 we award a merit bonus. This bonus is --</p> <p>17 the management staff as a whole is</p> <p>18 reviewed, and each individual receives part</p> <p>19 of this bonus. The bonus is based on our</p> <p>20 profits.</p> <p>21 Q. Okay. And was that divided according to</p> <p>22 some preset percentage?</p> <p>23 A. It is not a preset percentage each year.</p>	<p>1 the plaintiff?</p> <p>2 Q. I'm asking for Ms. McCollum.</p> <p>3 A. There was none allocated for Ms. McCollum</p> <p>4 during that period. The allocation of that</p> <p>5 plan is executed during the first quarter</p> <p>6 of the next year, and so I would say no,</p> <p>7 she was not -- there was no contribution</p> <p>8 made to a plan on her behalf.</p> <p>9 Q. Had she remained employed throughout the</p> <p>10 first quarter of 2005, would a contribution</p> <p>11 have been made?</p> <p>12 A. No.</p> <p>13 Q. Okay. Was a contribution made for any</p> <p>14 other employees in 2005?</p> <p>15 A. No.</p> <p>16 Q. Let me then move forward to now. What is</p> <p>17 the salary of Susan Seeber?</p> <p>18 A. Again, \$50,000 is an estimate. I believe</p> <p>19 it's \$50,000 per year.</p> <p>20 Q. But you're not certain of that?</p> <p>21 A. I'm fairly certain of that.</p> <p>22 Q. Does she receive any health insurance</p> <p>23 benefits?</p>

Page 33

- 1 A. I don't know if she has elected to. That
2 is something an employee can elect to.
3 Again, it falls under the similar
4 guidelines of if an employee elects to, we
5 participate in payment of half their
6 premium.
7 Q. Okay. Is there any provision for life
8 insurance?
9 A. Honestly, we have a plan of a couple of
10 items. I'm not sure what all is in them.
11 I know there is an accidental, like if
12 you're injured. I think life insurance is
13 in that plan. I do not know who all
14 participates in that plan, but there is an
15 option for that. I'm going to have to say
16 I'll have to look into it. I just can't be
17 certain on that one. I'm not sure what she
18 participates in.
19 Q. Okay. How about 401(k) or retirement plan?
20 A. There is a -- of course, as she --
21 Are you asking were any contributions
22 made on her behalf?
23 Q. I suppose my first question is, is there a

Page 34

- 1 plan that she's eligible to be a
2 participant in?
3 A. Depending on the profits of the company, it
4 would be similar that I discussed earlier.
5 Each person would participate.
6 Q. Okay. So depending on the profitability of
7 the company, there could be a bonus and a
8 contribution to a retirement plan?
9 A. Yes.
10 Q. Were there any bonuses or retirement
11 contributions in 2005?
12 A. No.
13 Q. Okay. I believe that's the year you told
14 me business was --
15 A. Right. Right. I'm going to verify -- I'm
16 going to say no, but I'm almost certain
17 that we -- because of the condition, we --
18 there was no contribution made to the
19 profit sharing or any bonusing. I'm going
20 to -- I don't think so. Again, that --
21 sometimes -- I can't remember exactly, but
22 I'm going to say I don't think so.
23 Q. Would the same general principle apply to

Page 35

- 1 all of your management and production
2 leaders that you discussed earlier, that
3 the management people could get a similar
4 percentage and that your production people
5 would get a lesser but similar percentage?
6 A. Yes.
7 Q. Would that apply to both bonus and the
8 retirement contribution?
9 A. No. The retirement contribution is
10 controlled by the salary. Participation is
11 by the salary.
12 Q. Okay. But if you did not have a good year,
13 there might not be --
14 A. Right. To clarify that, the company does
15 allocate the amount of money to that.
16 Q. Okay.
17 A. Which is then divided up based on the
18 salary.
19 Q. Okay. What is Bobby Lake's salary?
20 A. At this time? Let me think. I believe
21 it's 120,000.
22 Q. And does he participate in the health
23 insurance program?

Page 36

- 1 A. Again, I --
2 Q. I guess I really want to know --
3 A. It's available to him. Is that what you --
4 Yes, it's available to him. I'm not sure
5 if he participate or not.
6 Q. But in the event he does, the company would
7 pay half his premium?
8 A. Exactly.
9 Q. Okay. Tell me what Ms. McCollum's duties
10 were when she was initially hired.
11 A. She was basically in the accounting
12 manager's position. The accounts payable,
13 the payroll, the accounts receivable. And
14 to some degree, her duties also had the --
15 she issued or -- I can't remember what she
16 did exactly, but she issued purchase orders
17 or assisted with the issue of purchase
18 orders.
19 Q. If materials were needed for the production
20 process, would your inventory control type
21 person be one who would initiate obtaining
22 those materials?
23 A. The way we would plan it is a guideline for

Page 37

1 needs that we try to establish, and then
2 those needs are met with issuing blanket
3 purchase orders. Blanket purchase orders
4 are over a length of time, and they allow
5 delivery of certain parts on aschedule.
6 Generally, Ms. McCollum issuedthese POs.
7 The materials individuals would update her
8 on shortages or overages, I guess, in the
9 case it does happen, or I guess in some
10 cases when there's a yield loss if there
11 are parts that are received wrong.
12 Q. I'm going to talk here a little bit more
13 than I want to, but, again, trying to
14 understand. I have read of something
15 called just-in-time management. Is that
16 what you attempt to do with your -
17 A. That's very much what we attempt to do.
18 Q. So Ms. McCollum would be the person who
19 would send the purchase order out based on
20 what someone else told her the need was, or
21 what was her role?
22 A. Her role at that period would be-- I
23 believe she at that time issued the

Page 38

1 purchase order based on -- she would
2 discuss -- we had a weekly meeting, and --
3 or if we didn't have a weekly meeting, she
4 would discuss with the logistics person the
5 requirements, and then she would issue the
6 blanket orders on that behalf.
7 Q. And could you tell me just -- could you
8 tell me in a simple sort of way what a
9 blanket order is?
10 A. A blanket order is a purchase agreement for
11 delivery of parts over time. So rather
12 than one document saying a certain number
13 of parts delivered at one time, it's a
14 document that has multiple deliveries,
15 delivered over time.
16 Q. Okay. Would it be something that would
17 authorize up to a certain amount --
18 A. Yes.
19 Q. -- over a period of time?
20 A. That's exactly what it is.
21 Q. Okay. I noticed in our discussion thus
22 far, I don't believe there has been any
23 mention of a sales force. Do you have a

Page 39

1 specialized sales division?
2 A. That's my role primarily, but we sell
3 through distributors.
4 Q. Okay. When Ms. McCollum was hired as
5 accounting manager, who was her
6 supervisor?
7 A. I was.
8 Q. At any time during her employment, did she
9 have any other supervisor other than you?
10 A. No.
11 Q. I think the answer is obvious, but who in
12 the company would be in the best position
13 to know about Janice's performance as
14 accounting manager?
15 A. I would.
16 Q. Were there any personality conflicts
17 between Ms. McCollum and other management
18 staff?
19 A. Not that I was aware of.
20 Q. How did you come to hire Ms. McCollum? How
21 did you learn about her?
22 A. She responded to an ad we placed in the
23 paper, Montgomery Advertiser, and she

Page 40

1 submitted her resume. We talked to her.
2 Q. Okay. Did you then interview her after
3 that?
4 A. Yes, I did.
5 Q. Did you contact any references or other
6 persons before you made a decision to hire
7 her?
8 A. I can't recall in her case specifically.
9 Generally, we do ask for a couple of
10 references. I can't remember exactly what
11 I did in her case.
12 Q. Okay.
13 A. She did have a -- because her -- if I can
14 say, there was an automatic reference. Her
15 husband did work next door.
16 Q. Okay. That's a different company?
17 A. Uh-huh (positive response). Yes. I'm
18 sorry.
19 Q. Okay. So did you feel like you knew her or
20 knew of her?
21 A. No. Only thing is that was one --
22 Q. One of the things you remember about --
23 A. Right. Considering her for employment,

Page 41

1 yes.
2 Q. Did you do any kind of check of her
3 educational background?
4 A. I did not.
5 Q. And you don't recall whether you talked to
6 any of her former employers?
7 A. I do not.
8 Q. Okay.
9 A. I do think that there was -- if I'm not
10 mistaken, I think she was employed at that
11 time, and there was some concern over --
12 with her current employment over sharing
13 too much information, risking the current
14 job.
15 Q. At Amtren is there any formalized process
16 for evaluating employees?
17 A. There's nothing formal.
18 Q. Okay. Is that wholly up to your
19 discretion?
20 A. At that time, it was.
21 Q. Okay. How has that changed since that
22 time?
23 A. I'm not wholly. There are more individuals

Page 42

1 that try to look at someone's productivity
2 or someone's contribution.
3 Q. Specifically in the role of accounting
4 manager, currently who would evaluate that
5 person? You and --
6 A. I would still do that. Let me clarify
7 that. For any of the management staff that
8 report directly to me, they are solely my
9 responsibility still, and they maintain
10 that.
11 Q. Okay. Have the reporting lines changed
12 since Ms. McCollum left your employment?
13 A. No.
14 Q. All of the management people still report
15 directly to you?
16 A. Yes.
17 Q. Okay. You've told me a couple of things
18 that she did. I believe you've mentioned
19 ordering -- issuing purchase orders. Could
20 you sort of tell us what her job was as
21 accounting manager?
22 A. Day to day?
23 Q. Yes.

Page 43

1 A. I would say her job was to manage the
2 accounting system: Receipt of invoices
3 from vendors. Matching those invoices to
4 purchase orders and packing lists,
5 generating the payment for those,
6 generating the check for those, signing the
7 check, and even putting it in the envelope
8 and processing it for mail.
9 On the AR side -- excuse me -- accounts
10 receivable side, she would issue the
11 statements from Amtren to our customers.
12 On the payroll side, she would issue the
13 payroll on a weekly basis. She was also
14 responsible for paying tax deposits
15 weekly. She was responsible for
16 submission -- in the accounting role,
17 submission of the statements that the --
18 the reporting that has to go to the state
19 and the federal agencies.
20 I think that pretty much sums it up.
21 Q. Okay. Did she get additional duties as she
22 was employed other than those you've
23 described?

Page 44

1 A. Yes, but if I can back up. Some of the
2 duties I just mentioned, she was -- they
3 were provided at the end versus the
4 beginning.
5 Q. At the beginning?
6 A. And around October of -- let's see --
7 September, October of 2004, she received
8 the authority to sign checks and to
9 completely control the disbursement of our
10 funds.
11 Q. What reports did she provide to you on a
12 regular basis?
13 A. There's a report that we call recap report
14 that was a weekly recap that she would
15 summarize the basic parts of the company as
16 far as cash, the money we owed vendors,
17 accounts payable, the money that's owed us,
18 accounts receivable, the position on our
19 line of credit.
20 Additionally, the firm would have maybe
21 some forecasting in it; you know, based on
22 the current open orders, this may be the
23 potential income.

Page 45

1 Q. I was going to ask you what you meant by
 2 forecasting, but is that what you meant?
 3 A. Yes. Basically, at that point you look at
 4 the open orders, and you just look at the
 5 revenue that's going to be obtained from
 6 the open orders.
 7 Q. All right. You were present during her
 8 deposition, and there was some discussion
 9 of time lines for payment of liabilities or
 10 obligations of the company. What was the
 11 guideline that she operated under?
 12 A. For payments of vendors or payments of --
 13 Q. If they were separate guidelines, if you
 14 could tell me vendors first.
 15 A. Well, to clarify, one, any guideline from
 16 an agency like a federal or a state would
 17 generally be within the terms that they set
 18 forth.
 19 Q. Okay.
 20 A. For vendor payments, the guidelines were 30
 21 to 45 days upon receipt of payment. There
 22 are some exceptions to those, which are the
 23 general expenses which are paid kind of

Page 46

1 differently based on what they are. The
 2 health insurance is paid based on a
 3 statement type thing. The utility bills
 4 are paid a little bit different. But the
 5 trade vendors were paid on a cycle that I
 6 believe was 45 days at that time.
 7 Q. Were there occasions in the cash flow of
 8 the company that there were not always
 9 funds available to pay everyone within 45
 10 days?
 11 A. Yes.
 12 Q. After Ms. McCollum had authority to sign
 13 checks, were the checks in any way
 14 presented to you before they were issued?
 15 A. I can't recall the exact process, but she
 16 did give -- there is a report, but I do not
 17 think I saw the exact checks. I think
 18 instead I saw a check writing report.
 19 Q. Would you get that on a weekly basis or
 20 daily?
 21 A. It would probably come -- I think as part
 22 of that -- weekly, depending on the pay
 23 cycle, she would attach that -- and I

Page 47

1 believe it is called check writing report,
 2 weekly report.
 3 Q. Okay. Did she have any responsibility for
 4 sales?
 5 A. Not to my knowledge, not directly.
 6 Q. How about production?
 7 A. Not directly.
 8 Q. Inventory control?
 9 A. Yes.
 10 Q. What were her responsibilities for
 11 inventory control?
 12 A. Janice performed the inventory review when
 13 they physically counted the inventory, so
 14 you would say that she verified the
 15 inventory count on a periodic basis. I
 16 think it was quarterly.
 17 Q. Okay. Did she ever discover any
 18 discrepancies or problems there?
 19 A. Did she report -- you're asking me
 20 something different. Did she report to me
 21 that she discovered any discrepancies? I
 22 can't answer specifically.
 23 Q. Okay. Did she ever report any to you?

Page 48

1 A. No.
 2 Q. Were there any that you are aware of that
 3 were not reported to you?
 4 A. Yes.
 5 Q. What was that?
 6 A. Just talking about specific inventory
 7 items, right?
 8 Q. I'm talking --
 9 A. Let me back up and state that I can't give
 10 you specifics on that. And I want to be
 11 careful and answer your exact question. I
 12 was saying in general in making a
 13 statement, so --
 14 Go back and ask me one more time. Let
 15 me make sure I'm being very specific.
 16 Q. It was my understanding that you were
 17 telling me that her responsibilities in the
 18 area of inventory control were what I'll
 19 call an audit process.
 20 A. Exactly.
 21 Q. A verification process.
 22 A. Right.
 23 Q. Tell me exactly what she was supposed to

Page 49

- 1 do.
- 2 A. She would basically go into -- she would
- 3 work with production and schedule it. She
- 4 would go in there with the production
- 5 staff. We would stall production. They
- 6 would count all the parts. She would then
- 7 return to her office and sit down and enter
- 8 all the corrections into the system. What
- 9 she would then report is an outage of
- 10 inventory. What -- did not isolate
- 11 individual outages per part. So she would
- 12 indicate a -- I guess a gross outage.
- 13 What I indicated in errors were that as
- 14 we discovered, when she was making the
- 15 gross adjustments, she was just basically
- 16 taking the plus and minuses and giving me a
- 17 net result. When some of the swing of the
- 18 inventory count was significant, I was not
- 19 being reported that.
- 20 Q. Did she have any other responsibilities as
- 21 far as inventory control was concerned?
- 22 A. Not actually control. That would be it.
- 23 Q. Okay. This process of reporting to you a

Page 50

- 1 net instead of specific discrepancies I
- 2 guess I'll call them, when did that occur?
- 3 A. Basically, at the close of each quarter.
- 4 Q. Okay. So at the close of each quarter,
- 5 there was some failure on her part to
- 6 report to you an accurate inventory
- 7 figure?
- 8 A. I can't say it's a failure on her part to
- 9 report to me, no. What I'm saying is you
- 10 asked me about reports. She reported to me
- 11 the gross adjustments. I then made the
- 12 statement about how they were summed up.
- 13 The discovery of those errors were not --
- 14 you know, we -- during that process, it was
- 15 basically just a reporting. It's
- 16 reported. I can't say at that time that we
- 17 were aware of anything as far as problems
- 18 on that.
- 19 Q. Okay. As of the date of her termination,
- 20 were you aware of any problems of that
- 21 nature?
- 22 A. Yes.
- 23 Q. What problem were you aware of?

Page 51

- 1 A. That our inventory was a lot higher than we
- 2 had planned for, basically; that the
- 3 inventory was significantly high.
- 4 Q. What was the role of your logistics person
- 5 in maintaining the inventory?
- 6 A. To receive the parts in, to identify on the
- 7 receiver of the packing lists the receipt
- 8 of the parts, to submit those to
- 9 Ms. McCollum, and to -- in some ways, they
- 10 would work together to identify shortages
- 11 or overages.
- 12 Q. Okay. Did he provide any kind of report to
- 13 you regarding that?
- 14 A. No, not on a formal basis.
- 15 Q. Okay. Did that person participate in the
- 16 management meetings you were talking about
- 17 on a weekly basis?
- 18 A. Yes.
- 19 Q. Did that individual have responsibility for
- 20 ordering the parts that were needed?
- 21 A. If I remember the role, the role was
- 22 divided. There were some orders that this
- 23 individual may issue, and then there were

Page 52

- 1 some orders that Ms. McCollum issued on her
- 2 own. I don't remember the exact guidelines
- 3 for that dividing.
- 4 Q. Okay. Did that individual ever have any
- 5 problems with his or her reporting?
- 6 A. Not during -- you're talking about during
- 7 this time frame of Ms. McCollum's
- 8 employment?
- 9 Q. Yes.
- 10 A. No.
- 11 Q. How about later? Has the person in that
- 12 position ever had any problems with
- 13 carrying out their job function?
- 14 A. I will say that the later reports are
- 15 detailed reports, are part counts.
- 16 Q. Has the reporting process been changed?
- 17 A. I would say not changed. Just more
- 18 information provided with the report.
- 19 Q. Prior to Ms. McCollum's termination, had
- 20 there been any direction given to her to
- 21 provide more information?
- 22 A. Yes.
- 23 Q. Who gave her that --

Page 53

1 A. I gave her that.
 2 Q. How did you do that?
 3 A. I asked for more information be provided
 4 during the weekly summaries that she was
 5 providing.
 6 Q. Okay. And when you say you asked, was that
 7 verbal or in writing?
 8 A. It was verbal.
 9 MR. JACOBS: I'd like to take a
 10 short break.
 11 (Brief recess.)
 12 Q. (Mr. Jacobs continuing) Mr. Lamberth, did
 13 Ms. McCollum have a written job
 14 description?
 15 A. No. I don't recall. I don't think we ever
 16 did. As a whole, we don't do job
 17 descriptions.
 18 Q. That was going to be my next question.
 19 Does anyone in the company have a job
 20 description, a written one?
 21 A. No.
 22 Q. In your response to our discovery
 23 request -- I'm going to ask you about a

Page 55

1 response to you and telling you -- asking
 2 you to tell me what responsibilities she
 3 adequately failed to perform.
 4 A. The accounting system -- basically, there
 5 were several areas that -- you know, in the
 6 accounting system, this is -- you're not
 7 really pertaining to the software or
 8 anything, you're talking about the
 9 duties -- we're talking about the duties,
 10 you're basically saying now?
 11 Q. I don't know what I'm talking about. I'm
 12 asking you about your --
 13 MR. TRAWICK: I think he's just
 14 asking you to explain this
 15 answer.
 16 Q. Yes.
 17 A. Okay. I can clarify that the system in
 18 that statement was a process, so I can
 19 explain her deficiencies in that. When I
 20 mean system, I mean a system like our
 21 entire process.
 22 Several areas that she did. One is
 23 that she did overdraw at our -- on our bank

Page 54

1 series of things and reasons that you gave
 2 for terminating Ms. McCollum.
 3 One of those things was you allege that
 4 she failed to adequately perform her
 5 responsibilities pertaining to Amtren's
 6 accounting system.
 7 MR. TRAWICK: You're reading from
 8 paragraph number eight on page
 9 four?
 10 MR. JACOBS: I believe so, yes.
 11 We're going to be drawing from
 12 that for the next period of
 13 time.
 14 THE WITNESS: What page?
 15 MR. TRAWICK: Four.
 16 Q. Page four, number eight.
 17 What responsibilities did she fail to
 18 adequately perform?
 19 A. For?
 20 Q. The accounting system.
 21 A. The accounting system? Like the day-to-day
 22 activity or the --
 23 Q. I honestly don't know. I'm reading your

Page 56

1 account. We had never had that before. I
 2 was unaware of that. I was never made
 3 aware of that, and Amtren had adequate
 4 funds for the transactions.
 5 She issued the checks -- signed the
 6 checks, disbursed the checks, and then
 7 pulled money from our money market account
 8 to our checking account incorrectly. And
 9 then they would basically, apparently, not
 10 be covered, and we would pay for those
 11 penalties with overdraft charges.
 12 Q. Was this a particular transaction you're
 13 talking about, or was this more than one
 14 transaction?
 15 A. No, it was more than one transaction. If
 16 I'm not mistaken, it was several. It
 17 amounted to several thousand dollars in
 18 overdraft charges.
 19 Q. Could you identify those transactions for
 20 me?
 21 A. Could I identify them?
 22 Q. Yes.
 23 A. I believe that -- I don't know if we

Page 57

1 provided a list or not. I'm not sure.
 2 Q. Let me represent to you that I haven't seen
 3 a list.
 4 A. Well, I guess we will have to -- I believe
 5 that there is a list in this. Hang on.
 6 There is a list in here.
 7 MR. TRAWICK: I think the last
 8 page.
 9 A. It is in the --
 10 MR. TRAWICK: We produced this to
 11 you.
 12 A. Right. It is the last page of this.
 13 Q. And that would be the last page of your
 14 response to the EEOC?
 15 A. That's correct.
 16 Q. All right.
 17 A. Regarding the --
 18 Q. If we could mark this as Plaintiff's
 19 Exhibit 2.
 20 (Plaintiff's Exhibit 2 was marked
 21 for identification.)
 22 MR. TRAWICK: Plaintiff's Exhibit
 23 2 will be this five-page

Page 59

1 generated, this summary?
 2 A. I would say it would be on or around the
 3 date of this letter.
 4 Q. Okay.
 5 A. June 29th of 2005.
 6 Q. Let me just look at the very first item
 7 there, 10/26/2004. It says,
 8 reversal/credit, and then it has the number
 9 30 over there. Could you explain to me
 10 what that represents?
 11 A. I'm not sure what that means. The only
 12 part of this document that I'm probably
 13 going to be -- that I focused on or --
 14 would be the NSF charges.
 15 Q. Okay. And there are a series of those from
 16 10/29 of 2004 to 4/13/2005.
 17 If you would, take the first one of
 18 those, 10/25, and tell me what that
 19 represents.
 20 A. You mean the NSF?
 21 Q. Yes. Yes, the NSF.
 22 A. It's my understanding that that is a charge
 23 for nonsufficient funds for a check

Page 58

1 letter to the EEOC signed by
 2 Kirk?
 3 MR. JACOBS: Right.
 4 (Plaintiff's Exhibit 3 was marked
 5 for identification.)
 6 MR. JACOBS: And then Plaintiff's
 7 Exhibit 3 will be the
 8 attachment relating to item
 9 five.
 10 Q. Is that the one you're referring to, bank
 11 overdrafts, Mr. Lamberth?
 12 A. Yes.
 13 Q. If you would, explain that sheet to me.
 14 A. This sheet is a summary that outlines just
 15 the transactions on our checking account
 16 for these periods of time regarding this
 17 activity. We -- I had never really
 18 experienced overdrafts before, so when we
 19 discovered this, we just produced this
 20 document as a summary document to represent
 21 the number of NSFs which are identified in
 22 there.
 23 Q. First of all, when was this document

Page 60

1 presented at our bank without proper funds
 2 in the account.
 3 Q. What does the dash 30 mean?
 4 A. I think that that is a charge to our -- for
 5 the overdraft charge.
 6 Q. Okay. You're not sure what that is?
 7 A. I'm -- on that one, I think that is. It
 8 states NSF fee. I'm pretty certain that
 9 that's a charge from the bank to us for the
 10 overdraft.
 11 Q. Okay. Is it my understanding, then, that
 12 these other items on here other than NSF
 13 fees don't represent errors of any kind
 14 that you're referring to as --
 15 A. Not to my knowledge. I think that was a
 16 summary document that was produced that had
 17 other information on it. We were primarily
 18 for this attachment focused on the NSF fee
 19 portion.
 20 Q. Okay. And who generated this report?
 21 A. I did.
 22 Q. You did?
 23 A. Uh-huh (positive response).

Page 61

1 Q. How did you generate this report?
2 A. This report was pulled from our -- if I'm
3 not -- basically, it was produced as an
4 export from our on-line banking system, I
5 guess, log in.
6 Q. Okay. Did you have at that time open
7 access to your on-line accounts?
8 MR. TRAWICK: At which time?
9 Q. In 2004 and 2005.
10 A. I had access to it. I did not use it,
11 though.
12 Q. Okay. And it's your testimony that you
13 never had NSFs before?
14 A. Not to that magnitude, nor were they not
15 reported to me.
16 Q. Okay. Then it's your testimony that
17 Ms. McCollum was responsible for this and
18 that she never informed you of this in any
19 way?
20 A. No.
21 Q. Okay.
22 MR. TRAWICK: Wait. Read the
23 question back and read his

Page 63

1 question is regarding --
2 Q. Yes. What I want to know is what this
3 reference is to, to item five.
4 A. Item five --
5 MR. TRAWICK: On Plaintiff's
6 Exhibit 3.
7 Q. Three. What does that refer to in
8 Plaintiff's Exhibit 2?
9 A. That refers to -- in the summary, it is
10 item five in the summary.
11 Q. Okay. And that was my error in looking at
12 it across the table upside down.
13 MR. TRAWICK: That's okay. You
14 just confused me.
15 MR. JACOBS: Confused me, too.
16 Q. Okay. Your next statement was that she
17 overspent on inventory. How did she
18 overspend on inventory?
19 A. In January of -- in late December of 2004
20 and January of 2005, was the planned move
21 to the new product. So in February of
22 2005, we had planned to reduce the material
23 purchasing for the older FlexWriter model

Page 62

1 answer.
2 (The following was read: Then it's
3 your testimony that Ms. McCollum
4 was responsible for this and that
5 she never informed you of this in
6 any way? Answer: No.)
7 A. I meant to say yes. I am so sorry about
8 that. I'll listen to the question.
9 Q. Okay. This is entitled -- and I'll just
10 read it -- attachment to response relating
11 to item number six, bank overdrafts. Could
12 you tell me what item six you're referring
13 to in there in Plaintiff's Exhibit Number
14 2?
15 MR. TRAWICK: Well, you said
16 item -- this reads item five.
17 MR. JACOBS: I'm sorry. It is. I
18 looked at it upside down and
19 wrong.
20 Q. Is it item --
21 MR. TRAWICK: Item five.
22 Q. -- five of the BEOC response?
23 A. Well, it actually is -- you know, your

Page 64

1 that we -- it would be -- the revisions I'm
2 talking about.
3 The plan was never followed through
4 with, and we ended up with materials of the
5 older revision model. In other words, the
6 way the inventory was -- the mistaken
7 inventory resulted in the fact that --
8 We had had weekly meetings discussing
9 the fact that we would move to the new
10 model. The new model would dictate a lot
11 of changes in parts. We would subsequently
12 reduce the purchasing of the current model
13 parts so that at the end of January, we
14 would end up with a very low inventory
15 count. In February of that month, we would
16 do a retooling -- I mean, February of that
17 year, we would do a retooling and start
18 back up in March with the planned product.
19 Ms. McCollum mistakenly purchased
20 excessive inventory to the amount that we
21 had to delay the release of the new product
22 immediately because the number of parts
23 that we had were three to four to five

Page 65

- 1 months worth of inventory.
2 Q. How did you discover that?
3 A. The discovery of that was very difficult to
4 do because it was tied to the purchase
5 order documents that are on blanket
6 orders. So the blanket orders are an
7 underway -- an in-process document. The
8 plan was to revise those documents so that
9 the materials are depleted, so there was --
10 some of the documents were apparently not
11 changed, so the older parts continued to
12 arrive. So it wasn't like it was one
13 moment we looked and saw that it was
14 there. It was over a period of time.
15 Q. Okay. When did you first become aware of
16 that?
17 A. Well, obviously, the inventory -- the
18 excessive inventory was realized probably
19 February -- end of January, February, maybe
20 the middle of February.
21 Q. And what documents did you see that brought
22 that to your attention?
23 A. I can't really say what document, but I

Page 66

- 1 would say that it was the fact that the
2 materials were received in and we were
3 dealing with the materials on our floor. I
4 can't say, really, I had a document that
5 showed that. It just -- we had the
6 availability of a lot of the older material
7 parts in our inventory.
8 Q. All right. Are you telling me, then, that
9 Ms. McCollum ordered materials based on the
10 blanket purchase orders that were in place?
11 A. I'm not sure how the mistake may have been
12 made or was made. What I was alluding to
13 is that I was under the impression that she
14 was executing the proper changes to reduce
15 our inventory down at that point, and that
16 was not executed properly.
17 Q. Okay. Did your logistics person have any
18 role in maintaining that inventory or
19 getting the right inventory?
20 A. The individual at that point would receive
21 in the goods that would be issued based on
22 the purchase orders that were there. That
23 individual would basically -- depending on

Page 67

- 1 the -- I guess it would be -- that position
2 could not dictate immediately on that.
3 That position was really more of a check-in
4 of the purchase documents. So if the
5 purchase documents dictated that a certain
6 part arrive at a certain time, and that
7 purchase document was never changed, their
8 verification was part received based on the
9 purchase document. Ms. McCollum's role was
10 the purchase document.
11 Q. Who was that individual at that time?
12 A. The receiver? That was David Fields.
13 Q. David Fields?
14 A. Uh-huh (positive response).
15 Q. And to be sure that I'm clear, David Fields
16 had no responsibility for management of the
17 inventory as far as ordering the right
18 materials and making sure they were there?
19 A. Yes. They worked hand in hand on that.
20 Q. All right.
21 A. But during this period you mentioned,
22 the -- Mr. Fields -- Now, to the best of my
23 knowledge. Remember, the mistake -- I

Page 68

- 1 can't really pinpoint everything about all
2 of this. But the fact of the matter was
3 Ms. McCollum's role was to control the
4 purchase documents to sufficiently decrease
5 our inventory to a low balance in January.
6 Q. All right.
7 A. That was not done.
8 Q. Okay. And was that a specific directive in
9 writing?
10 A. We talked about it every week in a staff
11 meeting and discussed this progression.
12 Q. So that was the management meeting?
13 A. Yes.
14 Q. Okay. Was this one of the reasons that you
15 terminated Ms. McCollum?
16 A. Yes.
17 Q. The next item in your response there was
18 caused Amtren's checking accounts to be
19 overdrawn and failed to notify management.
20 Is that the one we've already talked
21 about?
22 A. That is. We've talked about that.
23 Q. So that's the same as number -- as the

Page 69	Page 71
<p>1 first one, failed to adequately perform her</p> <p>2 responsibilities pertaining to the</p> <p>3 accounting system?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Which one or ones of Amtren's</p> <p>6 vendors did Ms. McCollum not pay?</p> <p>7 A. Ms. McCollum in -- toward the end of</p> <p>8 February, the beginning of March, several</p> <p>9 vendors contacted me directly and stated to</p> <p>10 me that their -- they said --</p> <p>11 The two primary vendors are Brundidge</p> <p>12 Electronics Corporation in Brundidge,</p> <p>13 Alabama, and Carter & Carter Manufacturing</p> <p>14 in Lacey's Spring, Alabama. They're our</p> <p>15 two largest vendors. We have done business</p> <p>16 with them for years.</p> <p>17 They contacted me with concern over</p> <p>18 payments to their account.</p> <p>19 Q. Okay.</p> <p>20 A. Basically, we were approaching a limit of</p> <p>21 terms with them that they -- we were</p> <p>22 exceeding the credit limit is what we were</p> <p>23 approaching.</p>	<p>1 sufficient to make larger payments at that</p> <p>2 time?</p> <p>3 A. They should have been.</p> <p>4 Q. Well, were they?</p> <p>5 A. At that time, this would be -- I would say</p> <p>6 there should have been adequate cash to pay</p> <p>7 the accounts.</p> <p>8 Q. All right. Do you know whether there was</p> <p>9 adequate cash or not?</p> <p>10 A. To the best of my knowledge, there was</p> <p>11 adequate cash there.</p> <p>12 Q. If Ms. McCollum were to represent that</p> <p>13 there was not adequate cash to pay more,</p> <p>14 you would say that was not true?</p> <p>15 A. Not correct. That's really not -- Let me</p> <p>16 see. Let me go -- basically, the cash</p> <p>17 planning of the company was Ms. McCollum's</p> <p>18 responsibility. We had a line of credit</p> <p>19 and we had a checking account and we had</p> <p>20 materials. Totally responsible. Totally</p> <p>21 responsible for issuing the checks. So the</p> <p>22 problem occurs in that the cash position</p> <p>23 was also being reported there, too. The</p>
Page 70	Page 72
<p>1 Q. All right. How did they contact you?</p> <p>2 A. By phone.</p> <p>3 Q. Do you have records of when they contacted</p> <p>4 you with those phone calls?</p> <p>5 A. Unh-unh (negative response). I do not.</p> <p>6 Q. What specifically did they tell you when</p> <p>7 they called you?</p> <p>8 A. Just that they were concerned about the</p> <p>9 payments to their accounts.</p> <p>10 Q. Are you telling me they said they had not</p> <p>11 been paid?</p> <p>12 A. They -- really, more likely that the amount</p> <p>13 of money that -- we weren't paying against</p> <p>14 their account enough to decrease the amount</p> <p>15 we owed them. In other words, the</p> <p>16 outstanding amount was growing.</p> <p>17 Q. Okay. Was that outstanding amount</p> <p>18 reflected in the weekly recaps that you</p> <p>19 got?</p> <p>20 A. Not completely.</p> <p>21 Q. Was it partially?</p> <p>22 A. Partially.</p> <p>23 Q. Were the company's accounts, cash accounts</p>	<p>1 line of credit. So it's difficult for me</p> <p>2 to state one item without looking --</p> <p>3 discussing the other ones, see, because she</p> <p>4 reported the entire -- both situations to</p> <p>5 me.</p> <p>6 Q. All right.</p> <p>7 A. So we -- according to the plans, going back</p> <p>8 to the planned migration of the product,</p> <p>9 meaning the older revision to the newer</p> <p>10 revision, there was plenty of cash and a</p> <p>11 line of credit available to pay all vendors</p> <p>12 timely.</p> <p>13 Q. All right. What would we have to look at</p> <p>14 to verify that there was enough cash or</p> <p>15 that there was not enough cash available?</p> <p>16 MR. TRAWICK: Well, you're</p> <p>17 limiting your question to</p> <p>18 cash. I think his answer</p> <p>19 includes the line of credit</p> <p>20 also.</p> <p>21 Q. Well, then, I'll back up. What were all of</p> <p>22 the things that we would have to look at to</p> <p>23 determine whether there was sufficient</p>

Page 73

- 1 resources available?
- 2 A. What you would look at is the cash position
- 3 and the line of credit position beginning,
- 4 say, in October -- September, October of
- 5 the previous year and try to watch that
- 6 through this period that you're talking
- 7 about.
- 8 Q. Okay. And what would we have to look at in
- 9 order to be able to do that? Bank
- 10 statements?
- 11 A. I believe the bank statements would tell
- 12 you the transactions and the position, but
- 13 then we would also have to look at the --
- 14 probably an inventory sheet that would show
- 15 the inventory amounts as well.
- 16 Q. Okay. Anything else we would need to look
- 17 at?
- 18 A. I can't -- you know, that's asking
- 19 something I'm not completely familiar with,
- 20 how to completely do that.
- 21 Q. Are there any documents related to the use
- 22 or availability of the line of credit?
- 23 A. Well, I would imagine that would probably

Page 74

- 1 come from the bank statements, too.
- 2 Q. Okay.
- 3 A. I believe that that would -- again, I'm not
- 4 completely well versed at how you would
- 5 check that, but I believe that would be the
- 6 way to do it.
- 7 Q. What did you look at to make your
- 8 determination that that was the cause, that
- 9 she didn't pay the vendors, and there was
- 10 plenty of cash available?
- 11 A. Well, the -- my result -- this statement
- 12 results from the fact that when I was
- 13 made --
- 14 The vendors contacted me. I did
- 15 research into this to look into it. At
- 16 that time, I guess the information showed
- 17 that we had really just overspent in
- 18 several areas, including the inventory. So
- 19 my issue with Ms. McCollum at that time was
- 20 the incorrect execution of it or even
- 21 sharing with us this, you know, that this
- 22 was an issue that was arising.
- 23 Am I answering the question?

Page 75

- 1 Q. Well, what I'm trying to determine,
- 2 Mr. Lamberth, is sort of what you said.
- 3 You said at the time, you researched this.
- 4 I'm trying to find out what you researched,
- 5 what did you look at, what would I have to
- 6 go back and look at to verify whether what
- 7 you say you saw was, in fact, true.
- 8 A. I would say that I verified the accounts
- 9 payable that was being informed to me. And
- 10 some of these reports that I'm getting we
- 11 have not been able to locate as yet. So
- 12 what I was using was basically the
- 13 information shared from the weekly to show
- 14 the outstanding accounts payable, which is
- 15 the amount of money we owe the vendors.
- 16 When I received a call like this, I did not
- 17 know that that was growing. So my research
- 18 would have been to look into the accounts
- 19 payable, which in March I began to see
- 20 certain areas that concerned me. That
- 21 indicated to me that the information shared
- 22 with me on a weekly basis was not exactly
- 23 the position of the accounts payable we

Page 76

- 1 owed our vendors.
- 2 Q. If I were to look at or to have someone
- 3 knowledgeable to look at the accounts
- 4 payable, would I see the same things you
- 5 saw?
- 6 A. The issue here is the weekly reporting to
- 7 me as her supervisor versus what was
- 8 actually in the system. I do not know --
- 9 we have not been able to produce the weekly
- 10 reports completely yet, though we've
- 11 looked. So the issue is the information
- 12 shared with me on a weekly basis versus the
- 13 position of the company.
- 14 Q. So you don't have any evidence to back that
- 15 up at this time?
- 16 MR. TRAWICK: Object to the form.
- 17 I don't think that's what he
- 18 testified to.
- 19 Q. Well, I mean --
- 20 A. No. We have evidence, yes. Given time, we
- 21 can produce evidence.
- 22 Q. Okay. Well, what evidence do you have?
- 23 A. The evidence will be I have some of the

Page 77

1 forms. We're continuing to look for them,
 2 the reports. We actually have -- we've
 3 located several. I do believe that there
 4 are -- and I'll have to refer -- I think
 5 that we can definitely show this, because
 6 the information is not something that just
 7 was not completely apparent.
 8 Q. What documents have you turned over to me
 9 as Ms. McCollum's attorney that would show
 10 that?
 11 A. Well, this would be in our response. Let
 12 me see if I put anything --
 13 MR. TRAWICK: Don't verbalize your
 14 thoughts.
 15 A. I can't say at this time. I know that, to
 16 answer your question, we submitted all of
 17 the material that we had in response to
 18 your request for information. If we had it
 19 at that time, it would have been submitted.
 20 Q. Okay.
 21 A. I can't answer.
 22 Q. Have you discovered any additional
 23 documents since then?

Page 78

1 A. Relating to the inventory?
 2 Q. Yes, relating to that issue.
 3 A. No.
 4 Q. Do I understand you that you believe there
 5 are other documents that you have not been
 6 able to locate yet that would substantiate
 7 that position?
 8 A. We have been through the files
 9 extensively. Unfortunately, I do not think
 10 we will be able to locate a lot of these
 11 documents.
 12 Q. When Ms. McCollum gave you weekly reports,
 13 what did you do with them?
 14 A. Most of the time, she would take them back
 15 with her. Occasionally I would maybe keep
 16 a copy of them, but not anything definite.
 17 Q. So you didn't have any regular
 18 recordkeeping system?
 19 A. Not personally, I did not. I relied on the
 20 staff to do that.
 21 Q. Have you told me the basis for the
 22 statement that she failed to notify
 23 management that some of the vendors were

Page 79

1 not being paid? Is that what you were just
 2 telling me about?
 3 A. Well, the -- probably the -- there is an
 4 issue about the health insurance that would
 5 have occurred where -- that is a vendor --
 6 where the health insurance premium was not
 7 being paid timely, and we received notice
 8 of this. Basically, during my research
 9 during this period of investigating, I
 10 discovered that our health insurance was
 11 not being paid timely. That's one. Those
 12 are probably the three most significant
 13 ones.
 14 Q. What period of time was this investigation?
 15 A. Probably end of February through March,
 16 first of April.
 17 Q. Okay. During this time period that you
 18 were doing this investigation, did you
 19 discuss any of this with Ms. McCollum?
 20 A. I discussed with her weekly about getting
 21 the accounts payable information to match
 22 what exactly we owed. I asked her weekly
 23 to be certain that the accounts payable

Page 80

1 information matched every invoice received
 2 by the company the date of the receipt.
 3 Q. Did you ever go to her and say,
 4 Ms. McCollum, this doesn't match?
 5 A. Yes.
 6 Q. Okay. And when did you do that?
 7 A. Toward the period of March, there were a
 8 couple of times when the information just
 9 didn't appear to be -- to include
 10 everything, the accounts payable
 11 information that she had reported.
 12 Q. You say it didn't appear to. Were there
 13 specific things that you pointed out to her
 14 and said, explain this to me?
 15 A. No, I did not.
 16 Q. Okay. Attachment two to your EEOC
 17 response, to item number two, we'll mark
 18 as -- I think it's Plaintiff's 4.
 19 (Plaintiff's Exhibit 4 was marked
 20 for identification.)
 21 Q. Are those the documents that you rely on
 22 for your statement that she failed to pay
 23 health insurance premiums timely?

Page 81

1 A. Yes.
2 Q. Are there any other documents to
3 substantiate that accusation that you're
4 aware of?
5 A. Not that I'm aware of.
6 Q. The next item that I have on my list is
7 accounts payable reports and other
8 accounting reports were not accurate.
9 Which reports were not accurate?
10 A. Those reports relate to the weekly summary
11 reports that she's provided.
12 Q. Did you attach any of those to your
13 response to the EEOC?
14 A. No, sir.
15 Q. Have you supplied us with any such
16 reports?
17 A. Any we located, we did. A lot of those
18 reports were the ones we have yet to
19 locate.
20 Q. What reports were not -- what accounting
21 reports were not accurate?
22 A. The accounts payable position, which means
23 the invoices that were being entered into

Page 82

1 our system.
2 Q. Do you have any of those reports here with
3 you today?
4 A. Do I have any of those reports with me?
5 Q. Yes.
6 A. No.
7 Q. In our deposition notice we asked you to
8 bring anything to support or substantiate
9 those things. You didn't bring anything
10 with you?
11 MR. TRAWICK: Well, the deposition
12 notice appears to cover the
13 same things you've requested
14 in your request for production
15 of documents. We produced
16 quite a few documents in
17 response to your request for
18 production which you haven't
19 included in Plaintiff's
20 Exhibit 1. We also responded
21 that there were numerous
22 documents that we would make
23 available at the offices of

Page 83

1 Amtren. You haven't been out
2 to see any of those
3 documents. We didn't bring
4 any of those documents today.
5 MR. JACOBS: I need to get out
6 there next week, then
7 Q. You didn't bring anything other --
8 A. As Mr. Trawick pointed out, there were
9 substantial documents supplied with this.
10 I didn't bring any additional documents.
11 Q. All right. In Plaintiff's Exhibit Number
12 1, item number 11, we asked that you
13 produce copies of all documents taken into
14 consideration or referred to in the
15 decision making process that led up to her
16 termination, and you reference those that
17 are Bates stamped 12 through 62. Are those
18 the documents that would be responsive to
19 those concerns? That would be about 50
20 pages.
21 MR. TRAWICK: Are you asking if he
22 has any other documents
23 today? I don't understand

Page 84

1 what you're asking.
2 MR. JACOBS: Well, I'm asking if
3 those are the documents that
4 he's referring to that were
5 supplied that would be
6 responsive to this question
7 about what accounts payable
8 reports were not --
9 MR. TRAWICK: Why don't you show
10 him the documents?
11 MR. JACOBS: Well, I didn't bring
12 them all with me either.
13 MR. TRAWICK: I don't know how he
14 can answer the question
15 without seeing the documents.
16 You're asking him are those
17 all the documents?
18 MR. JACOBS: Yes.
19 THE WITNESS: But there are no
20 documents.
21 MR. TRAWICK: He didn't bring
22 them.
23 Q. But you supplied them. Were there any

Page 85

documents that you have that you did not supply included in Bates stamps numbers 12 through 62?

MR. TRAWICK: At the time, those documents that we produced were all that we located. If we locate additional documents, we'll supplement that. He's made reference to additional documents that were in Ms. McCollum's possession when she was employed there that we cannot find at this present time.

Kirk hasn't mentioned this, but there are bank statements that were in Ms. McCollum's possession during the time that she was employed there that we can't find.

Q. Have you sought to have the bank reproduce those statements for you?

Page 86

A. Yes, we had them reproduced. That's the only thing -- we went -- during the period of time that I was doing research, I couldn't find a substantial amount of files, which led to me having to rely more and more on the weekly summary sheets provided. So the issues we were not -- we were not able to -- a lot of the documents that -- well, the way the files were arranged, the documents, it's very hard to locate a lot of things. We just couldn't find some things.

Q. When did you request those statements from the bank?

A. It would have been approximately end of April, first of May.

Q. Okay. It was after Ms. McCollum was terminated?

A. Yes.

Q. Okay. Overpaid some vendor invoices. What does that refer to?

A. That refers to specifically the Plextor invoice where we had -- Ms. McCollum had

Page 87

missed a price change on the product and had overpaid the vendor.

Q. Okay. How did Plextor communicate to Amtren any changes in its prices?

A. Plextor's role as a vendor is to provide any current price change that's applicable during the period. Ms. McCollum had issued blanket orders that exceeded these periods. The proper way that would have protected a price change would be to footnote some notification of this. Our purchase documents did not.

The price change -- I noticed, myself, that another vendor, a trade vendor was selling the Plextor at a lower price. I made the statement in a weekly meeting, and subsequently further review showed that Plextor had made a price change somewhere around the middle of October. We had requested Ms. McCollum to follow up on that and to revise the purchase documents that control the receipt of goods. Apparently, as this shows, she failed to change the

Page 88

purchase documents, and the materials were still received in at the higher price. Also the payments were issued and the checks signed from Ms. McCollum for the payment of the higher price.

Q. When did you discover that?

A. That was discovered -- I would say that was discovered somewhere around the first part of -- that February time frame that we were -- that I was beginning to review things more carefully.

MR. TRAWICK: In 2006?

A. I'm sorry. 2005. 2005.

MR. TRAWICK: Excuse me.

Q. And did you report that to Ms. McCollum?

A. That one I did discuss with Ms. McCollum, and she assured me that it had been corrected and that credits would be issued.

Q. Okay.

A. And they were not, by the way.

Q. You never got credit for those?

A. We sought credits after Ms. McCollum had departed. I sought credits with Plextor

Page 89

1 and recovered thousands of dollars. And
2 that is one of the documents I believe that
3 is -- I think that we sought credit for the
4 payment for the price change, or -- they
5 weren't able to give us the whole amount.
6 I believe they were able to give us several
7 thousand dollars.

8 MR. TRAWICK: It's in six.

9 A. I believe, since we don't have all the
10 documents here, that we did submit -- it's
11 hard for me to verify with what we have
12 here, but the Plextor documents were part
13 of our --

14 MR. TRAWICK: The Plextor
15 documents were not part of the
16 response to the EEOC. I don't
17 recall which documents off the
18 top of my head because we
19 produced quite a few documents
20 in response to your request
21 for production of documents.
22 But there is a summary in the
23 response to the EEOC regarding

Page 91

1 question the way you phrased
2 it.

3 Q. Are these all the ones you produced to the
4 EEOC?

5 A. Yes, that is true.

6 MR. JACOBS: Well, let's mark that
7 one as Plaintiff's Exhibit
8 Number 5.
9 (Plaintiff's Exhibit 5 was marked
10 for identification.)

11 Q. And probably, to move this along, the next
12 couple of items are failed on several
13 occasions to timely respond to notices from
14 tax revenue departments, including the
15 Internal Revenue Service. Caused Amtren to
16 receive penalties for late tax deposits.
17 Are those the same thing?

18 A. Right. They relate -- again, clarifying, I
19 don't know the extent of the documents we
20 provided, but they do relate to this item
21 number one that you just submitted here.

22 Q. All right. And the issue of the insurance
23 payments I believe we've already talked

Page 90

1 the issue of Plextor.

2 Q. But there were no documents submitted to
3 the EEOC?

4 A. That's correct.

5 Q. All right. You speak of the payroll tax
6 deposits. Are there any documents other
7 than those that are attached to your EEOC
8 response, item number one?

9 A. To the best of my knowledge, that was what
10 we had at that time, yes.

11 Q. Okay. Well, let's --

12 MR. TRAWICK: Again, we produced
13 numerous documents in response
14 to your request for
15 production. I know that's not
16 a trick question.

17 MR. JACOBS: No, it's not. And I
18 would say that some of the --

19 MR. TRAWICK: You're asking him if
20 that's all the documents, and
21 without having the documents
22 that we've produced to you, I
23 think that's an unfair

Page 92

1 about in connection with another item?

2 A. Yes.

3 Q. Failed on several occasions to make timely
4 entries into Amtren's accounting systems.
5 Could you explain that one for me?

6 A. That relates to the accounts payable issue
7 we covered earlier with invoices being
8 received and being entered.

9 Q. Okay. Failed to timely inform management
10 of her errors and omissions. Which errors
11 and omissions are we talking about?

12 A. Primarily the excess -- the excess
13 inventory was caused by the purchase orders
14 not being revised and the Plextor purchase
15 order not being revised.

16 Q. Okay. The credit card merchant agreement.
17 That's the attachment to item number three
18 here?

19 A. Yes.

20 Q. Okay.

21 MR. JACOBS: We'll mark that one
22 as Plaintiff's Exhibit Number
23 6.

Page 93

1 (Plaintiff's Exhibit 6 was marked
 2 for identification.)
 3 Q. Could you explain to me what you meant by
 4 exceeded her authority on several
 5 occasions.
 6 A. Primarily that would relate to the copier
 7 lease where that -- we had discussed
 8 obtaining a copier, and we did obtain a
 9 copier, and she entered into a lease
 10 agreement. Even though the company had
 11 discussed the fact that we would do that, I
 12 was unaware that she had executed a lease.
 13 Q. Was that discussed in one of the management
 14 meetings, getting a copier?
 15 A. The copier. Not the execution of the lease
 16 without an officer signing it.
 17 Q. Okay.
 18 MR. JACOBS: Let's mark this one
 19 as Plaintiff's 7.
 20 (Plaintiff's Exhibit 7 was marked
 21 for identification.)
 22 Q. The next item refers to price decreases
 23 from Plextor. Have we discussed that?

Page 94

1 A. That was the item we talked about.
 2 Q. All right. Which other duties pertaining
 3 to the purchase of MAS90 did she not
 4 perform adequately?
 5 A. The integration of MAS90 was discussed
 6 extensively at the end of 2004, and we had
 7 generated a document to sit down and review
 8 this process. The undertaking would be
 9 significant. It was my understanding that
 10 as Ms. McCollum moved forward with that,
 11 she would seek integrated services, turnkey
 12 integrated services from the vendors that
 13 we were discussing. She handled the
 14 discussions with the vendors and sought the
 15 bidding and was subsequently awarded the
 16 bid. At that time -- and it wasn't until
 17 later did I know that we did not submit --
 18 we did not obtain a fully integrated
 19 package. We obtained a package that was
 20 partially integrated that we would
 21 subsequently have to -- I guess the word is
 22 enter the data on our own later to
 23 completely fulfill it.

Page 95

1 Q. Did you ever see the agreement that was
 2 signed regarding that system?
 3 A. I saw parts of the agreement. I don't know
 4 that I knew specifically about that. It
 5 was Ms. McCollum's responsibility. For
 6 Amtren's benefit, that had to be a fully
 7 integrated system. It was my understanding
 8 with her we would obtain a turnkey fully
 9 integrated system, and I subsequently
 10 approved her to spend the moneys that we
 11 did on that. I do not recall looking
 12 specifically at the details of the contract
 13 to that extent.
 14 Q. Was there a specific amount of money that
 15 you approved for her to spend?
 16 A. I don't think it was specific, but I think
 17 we do -- we did discuss the numbers that we
 18 ended up paying. I don't know the exact
 19 numbers, but I do think 20 or \$30,000. The
 20 issue was not really the financial part so
 21 much as to make sure it was turnkey; that
 22 it was to be fully implemented.
 23 Q. Okay. So if I can restate, and you tell me

Page 96

1 if I'm wrong. Is it fair to say that what
 2 you're complaining of there is the fact
 3 that she did not contract with Wilson,
 4 Price for a completely installed and
 5 implemented system?
 6 A. Yes. That is a pretty fair assumption.
 7 There are a lot of terms that have been
 8 passed around about integration of MAS90.
 9 The issue that we had was pretty much in
 10 line with what you said.
 11 Q. Okay. And is that also the basis for your
 12 complaint, the next one, that she released
 13 Wilson, Price prior to the complete and
 14 satisfactory conversion to the new
 15 accounting system?
 16 A. Yes.
 17 Q. Who was your technical assistance person
 18 from Wilson, Price in implementation of
 19 that system?
 20 A. Bobby Lake.
 21 Q. Okay. Do you know if Bobby Lake ever
 22 complained to Wilson, Price regarding any
 23 lack of appropriate performance on the part

Page 97

- 1 of Ms. McCollum?
- 2 A. I'm unaware. I don't know.
- 3 Q. During the time that Ms. McCollum was
- 4 employed by you, were there any reports to
- 5 you from Wilson, Price that her performance
- 6 was less than adequate?
- 7 A. I don't think so. I don't think so.
- 8 Q. Okay. When you hired Bobby Lake, were you
- 9 aware that your contract forbade the hiring
- 10 of any person from Wilson, Price who was
- 11 involved in implementing that contract for
- 12 a period of 180 days?
- 13 MR. TRAWICK: Object to the form.
- 14 Are you stating that's what
- 15 the contract states?
- 16 MR. JACOBS: Yes.
- 17 Q. I'm asking you if you were aware there was
- 18 a restriction in your contract with Wilson,
- 19 Price that you could not hire any of their
- 20 employees who were involved in that
- 21 contract for a time period after completion
- 22 of the contract.
- 23 A. Of how many days?

Page 98

- 1 Q. I believe it was -- I believe it was 180
- 2 days.
- 3 Eighteen months. I'm sorry.
- 4 A. Those items were discussed with Wilson,
- 5 Price when Bobby's employment was sought.
- 6 So we were aware, yes, but the items were
- 7 discussed with Wilson, Price.
- 8 Q. Whom did you discuss it with at Wilson,
- 9 Price?
- 10 A. I basically -- I personally don't think I
- 11 discussed with anybody anything. I think
- 12 Mr. Lake -- it was his responsibility to
- 13 review that.
- 14 Q. Okay. But Amtren was a signatory to the
- 15 contract?
- 16 A. I'll have to see the contract that you're
- 17 talking about. You're talking about for
- 18 that -- the Wilson, Price contract?
- 19 Q. Yes.
- 20 A. How can I answer that without seeing it? I
- 21 mean, I would say we entered into an
- 22 agreement, yes, to purchase MAS90. I do
- 23 not recall the details of the contract, to

Page 99

- 1 that nature.
- 2 Q. Okay.
- 3 A. Does that -- that's the best I can answer.
- 4 Q. Okay. I'm going to ask you about some
- 5 individuals now. Jerry Weisenfeld is the
- 6 first one. What was Jerry Weisenfeld's
- 7 title?
- 8 A. His title, I believe, was business manager
- 9 or business management. It was more of a
- 10 business expansion role.
- 11 Q. Okay. Was his job different from the
- 12 person who now has the title of business
- 13 manager?
- 14 A. Oh, yes, completely.
- 15 Q. Okay.
- 16 A. Yes. His role -- to clarify,
- 17 Mr. Weisenfeld's role was sales and
- 18 vendor -- large account relations. We have
- 19 a lot of large accounts. His role on the
- 20 business side was really not the inner
- 21 workings, but more about sales, to assist
- 22 in sales, development of strategic
- 23 relationships with some of our larger

Page 100

- 1 accounts.
- 2 Q. Did he have any responsibility for the
- 3 MAS90 system?
- 4 A. No, he did not have any responsibility.
- 5 Q. Did he have any responsibilities for
- 6 banking?
- 7 A. No, no direct responsibilities for banking.
- 8 Q. Did he have an indirect responsibility?
- 9 A. No, I don't think so.
- 10 Q. Okay.
- 11 A. You know, his role did overlap in certain
- 12 areas, but he didn't have any direct
- 13 responsibility for banking.
- 14 Q. And was it Mike Bishop you told me was the
- 15 logistics person?
- 16 A. No, David Fields.
- 17 Q. David Fields. Okay.
- 18 Did David Fields ever make any large
- 19 mistakes in inventory?
- 20 A. Pertaining to what period? The period --
- 21 Q. During the time he was employed by Amtren.
- 22 A. In a previous position. It wasn't his
- 23 mistake as an individual, but we did have

Page 101

1 to -- he did make -- there was a sizable
2 mistake made in the costing of our product
3 through the year. At the end of the year,
4 the initial report showed the mistake.
5 Before we closed the year end and produced
6 the documents, it was corrected. So I
7 would say yes, there was an error or
8 omission on his part at that time.
9 Subsequently we identified that and
10 discussed it with him and --
11 Q. Corrected it?
12 A. -- corrected it.
13 Q. And I assume he did not get terminated?
14 A. He got moved to a different position. He
15 got -- he was removed entirely from his
16 accounting duties.
17 Q. Okay. What position was he moved to?
18 A. Primarily purchasing -- well, the
19 production and logistics role.
20 Q. Okay. I believe that it's been indicated
21 in responses that Lisa McNamee took over
22 Ms. McCollum's duties when she was
23 terminated.

Page 103

1 A. In generating them, because of the
2 deficiencies of the system, we worked
3 together to try to correct some of those.
4 Q. Okay. And Susan Seeber, what duties did
5 she have when she came on board?
6 A. She basically --
7 MR. TRAWICK: Other than what he's
8 already testified to?
9 MR. JACOBS: Yes.
10 A. That's primarily it.
11 Q. Okay.
12 MR. TRAWICK: Unless you have
13 something to add to what
14 you've already testified to.
15 THE WITNESS: No.
16 Q. Who at the company was responsible for
17 strategic planning?
18 A. That probably would be myself.
19 Q. Have you fired any management employees at
20 Amtren other than Ms. McCollum?
21 A. You mean in the history of the company
22 or --
23 Q. Yes.

Page 102

Page 104

1 A. That's correct.
2 MR. TRAWICK: Well, I think our
3 responses were she took over
4 some of the duties, and later
5 Susan took over some as
6 Mr. Lamberth has testified
7 here today.
8 Q. Okay. What duties did Lisa McNamee take
9 over?
10 A. Primarily the execution of the accounts
11 payable, accounts receivable. She did the
12 accounting portions as far as the --
13 actually, the payroll, the accounts
14 payable, and the accounts receivable.
15 Q. Putting information into --
16 A. And mainly producing the documents --
17 Q. Okay.
18 A. She produced the checks for payment. She
19 did everything -- she did not sign them,
20 but she did produce the checks for payment.
21 Q. Okay. Did she have the same responsibility
22 in reference to those blanket purchase
23 orders that you were talking about?

1 A. Well, I would say yes.
2 Q. Okay. Who else have you fired?
3 A. Mr. Fields.
4 Q. Why was Mr. Fields fired?
5 A. Basically, his job performance. Inadequate
6 job performance.
7 Q. Any others?
8 A. Mr. Traywick.
9 MR. TRAWICK: Not me.
10 A. I'm sorry. Len Traywick.
11 MR. TRAWICK: I haven't been fired
12 yet.
13 Q. What was that person's position?
14 A. Len was -- Len was there a short time
15 frame. He was there for production,
16 primarily production, but he failed to be
17 productive, basically, and his job
18 performance failed to meet expectations of
19 the company.
20 Q. Is it true that when you fired
21 Ms. McCollum, you told her that you
22 couldn't -- you were firing her because you
23 couldn't trust her?

Page 105

- 1 A. Not entirely, no. I didn't make the
2 statement, that's why I'm firing you, no.
3 We sat down and discussed the deficiencies
4 of these items we've discussed here.
5 Q. And to be sure I'm clear, you went over
6 each of these items with her when you
7 terminated her?
8 A. Actually, no. The exit interview -- being
9 a small business, I prepared for the exit
10 interview with a list of items that we had
11 located during this few months of
12 discovery. I sat down with her to discuss
13 those, and we only got through a few, and
14 that basically -- I think it pretty much --
15 she knew where we were going, and we
16 just -- I moved on. I did not --
17 It would be a given, you know, that any
18 of those items on there, to my opinion,
19 were sufficient enough for dismissal. So
20 even though the additional documents were
21 there, after I got through the first few, I
22 didn't continue on with the rest of them.
23 Q. Were there any other females that you

Page 106

- 1 terminated in 2004, 2005?
2 A. Terminated?
3 Q. Yes.
4 A. No. Let me verify that, make sure. 2004,
5 2005. Full-time employees?
6 Q. Full time or part time.
7 A. If that doesn't include contract workers,
8 no. No one else.
9 Q. Were there any contract workers that you
10 terminated?
11 A. Well, contract workers are temporary. I
12 mean, they're hired on need and
13 occasionally released when the need is not
14 there. So, yes, I believe there was one
15 during this period.
16 Q. Okay. Do you recall who that was?
17 A. Not by name.
18 Q. Let me tell you, I have heard the name in
19 Ms. McCollum's position of Melody or
20 Melanie.
21 A. No. Melanie, she resigned.
22 Q. Okay. And she was not terminated?
23 A. No. She resigned.

Page 107

- 1 Q. Was she a full-time employee?
2 A. Yes, she was.
3 Q. And where did she -- what was her position?
4 A. She was an assistant to me.
5 Q. Who was responsible for filing your tax
6 payments and tax returns after Ms. McCollum
7 was terminated?
8 A. That would have -- immediately after that,
9 it would have fallen into Ms. McCollum's
10 responsibilities -- I mean, Ms. McNamee's
11 responsibilities. Yes. Immediately upon
12 that, it would have been -- fallen to
13 Ms. McNamee.
14 Q. When did you first become aware of what was
15 submitted as Defendant's Exhibit 5 at
16 Ms. McCollum's deposition? I believe it's
17 Exhibit 5 also to this deposition.
18 MR. TRAWICK: You have
19 Defendant's --
20 MR. JACOBS: I have Defendant's 5
21 here.
22 MR. TRAWICK: I don't have my copy
23 of her deposition. Can we

Page 108

- 1 take a break, let me get my
2 copy?
3 (Plaintiff's Exhibit 8 was marked
4 for identification.)
5 (Brief recess.)
6 Q. (Mr. Jacobs continuing) Mr. Lamberth, I've
7 given you a copy of what was marked as
8 Defendant's Exhibit 5 at Ms. McCollum's
9 deposition. I'd like to ask you, when did
10 you become aware of that document?
11 A. I don't really recall the exact date of
12 this.
13 MR. TRAWICK: Now, in the
14 Plaintiff's Exhibit 8, you've
15 included Defendant's Exhibit 5
16 to Ms. McCollum's deposition
17 and Defendant's Exhibit 6 to
18 her deposition. I'm not sure
19 exactly what you're asking
20 him.
21 MR. JACOBS: I was asking about
22 5. I didn't really mean to
23 include 6, although it's a

Page 109

1 similar type of document.
2 A. I don't know if it's the exact tax notice,
3 but I did -- during this period of review,
4 we did discover an unposted notice in the
5 accounting area that had -- showed a
6 penalty that I was unaware of. I don't
7 know if the exact document or not.
8 MR. JACOBS: And I'm going to take
9 Number 6 off of the back of
10 this. I really didn't intend
11 to include that. I just made
12 a mistake in handing it to
13 him.
14 Q. So you believe that you got that prior to
15 the time that she was terminated?
16 A. I can't say if this same exact document.
17 I'm not sure of that. But I will tell you
18 that I discovered a notice from the IRS on
19 a late penalty that I was unaware of.
20 Q. All right. Prior to Ms. McCollum's
21 employment with Amtren, had there ever been
22 any 941's that were paid late, taxes that
23 were paid late or penalties incurred?

Page 110

1 A. I don't know about the 941, but we had --
2 there were some occasions where we did have
3 penalties on the payroll, late.
4 Q. Okay. Have you had any since she was
5 terminated?
6 A. I can't answer that completely. To the
7 best of my knowledge, if we had any, it
8 would have been during the period
9 immediately following Ms. McCollum's
10 departure because we did not have all the
11 information to subsequently track where we
12 were. But since taking -- moving several
13 months beyond that, when we properly track
14 and document what we needed to do, we've
15 not paid any. So I don't know the exact
16 time there as to when.
17 Q. In the time period prior to her employment
18 where there were some late payments and
19 some penalties, was the person who was
20 responsible for that terminated?
21 A. No.
22 Q. Did Blue Cross Blue Shield actually
23 terminate your health insurance coverage?

Page 111

1 A. They sent a letter of notice of
2 termination, immediate termination.
3 Q. And I guess my question is, did they
4 actually terminate it?
5 A. Upon receipt of that letter, we arranged
6 special circumstances and sent them an
7 express payment overnight. It is my
8 understanding that Alabama has a protection
9 factor in there that allowed us to send
10 that check overnight, and they would
11 continue our coverage. I'm not sure of the
12 exact -- how all that works. But when we
13 discovered the notice and we made the --
14 contacted them, they assured us. They
15 mandated that we catch the arrears payment
16 that had been collecting up front, so we
17 had to pay two payments immediately in
18 overnight payment.
19 Q. Was Lisa McNamee ever terminated?
20 A. No.
21 Q. Did she leave the employ of Amtren at some
22 point?
23 A. Yes.

Page 112

1 Q. What is the position held by Amy Holley?
2 A. She is a -- I would classify Amy as a
3 part-time support, office staff support.
4 Let me ask you. During this period now
5 or the time of Ms. McCollum?
6 Q. Let me ask now.
7 A. Now? As a support person.
8 Q. Okay.
9 A. She supports in a couple of areas, pretty
10 much where they need her.
11 Q. What was her position during the time
12 Ms. McCollum was employed?
13 A. I think she was the receptionist, and she
14 worked with Ms. McCollum on accounting
15 entry duties.
16 Q. Okay. Have you ever been terminated from a
17 job?
18 A. From a -- yes, from a company I owned part
19 of.
20 Q. You were a part owner of the company?
21 A. Yes. It was -- I guess I was 25 years old
22 and had started -- 25, 26 -- started a
23 business. The business owners and myself

Page 113

1 didn't agree, so, yes. To answer your
2 question, there was -- I was terminated
3 from that venture.

4 Q. Okay. I assume you weren't a majority
5 owner.

6 A. Well, I wouldn't have been. Exactly. I
7 was a minority holder, and that made that
8 pretty easy.

9 Q. And that's the only position?

10 A. Yes.

11 Q. If you'll give me five minutes, then we are
12 very close to being done. Let me stop and
13 think.

14 (Brief recess.)

15 Q. (Mr. Jacobs continuing) Mr. Lamberth, I am
16 very nearly through. I suppose that one
17 thing that I would like to ask you is you
18 made reference to other documents that you
19 have at the company that I can come see
20 that will support what you've said. What
21 kind of documents are those?

22 A. Relating to which question are you talking
23 about?

Page 114

1 Q. You know, they're the documents that we
2 have not been able to locate. Well,
3 obviously, I can't come look at those.

4 A. Right. Right. The other documents, first,
5 since we don't have -- we submitted a lot
6 of documents with this item here. The
7 first thing I would offer is to let -- I
8 guess let us look through that and see if
9 we -- if we submitted it in there. I can't
10 recall since the document's not there.

11 MR. TRAWICK: Well, now, just so
12 the record is clear, you in
13 your request for production of
14 documents asked for a lot of
15 documents that we objected to,
16 and a lot of documents we said
17 are available. Now your
18 question is what documents
19 prove --

20 MR. JACOBS: Well, let me back up.

21 Q. What documents are available that we can
22 see that haven't been produced?

23 MR. TRAWICK: I think that's in

Page 115

1 our response. We've
2 identified documents that you
3 can see that are available at
4 the offices of Amtren that
5 we're not objecting to, or at
6 least we're objecting to and
7 without waiving our objection,
8 we'll make some available.
9 Some we just will continue to
10 object to, and you and I --
11 I'll be happy to discuss it
12 with you, and maybe we can
13 resolve my objection and
14 produce the documents without
15 a motion to compel.

16 MR. JACOBS: Well, for example, on
17 59, I asked for documents that
18 report or in any way refer to
19 or show inventory errors in
20 2002, 3, and 4.

21 MR. TRAWICK: Which number is
22 that?

23 MR. JACOBS: Number 59.

Page 116

1 MR. TRAWICK: Well, that's
2 something I'll be happy to
3 discuss with you. I'm not
4 going to discuss it at this
5 point in time.

6 MR. JACOBS: Okay. When --

7 MR. TRAWICK: After the
8 deposition, I'll be happy to
9 discuss it with you. I mean,
10 we produced some documents,
11 and some we objected to
12 because you didn't allege
13 pattern and practice. Those
14 are legal issues that you and
15 I will talk about.

16 MR. JACOBS: Are there other
17 documents of inventory errors
18 by the plaintiff that have not
19 been produced?

20 MR. TRAWICK: I will look at our
21 response, but I think the
22 answer to that is no.

23 MR. JACOBS: Okay. Well, it is

Page 117	Page 119
<p>1 unclear from this response, 2 without waiving the objection, 3 that they will be made 4 available -- 5 MR. TRAWICK: I can tell you that 6 I'm not going to spring some 7 documents on you at the last 8 minute if that's what you're 9 asking. 10 MR. JACOBS: Well, that's one of 11 my concerns, obviously. 12 MR. TRAWICK: No. I don't 13 practice law that way. If 14 there's a document that we're 15 going to rely upon, and it 16 hasn't been produced, I'll 17 supplement it before motions 18 for summary judgment are due. 19 I think we've produced 20 everything. 21 MR. JACOBS: I believe that's all 22 that I have, but I would like 23 for us to discuss that issue.</p>	<p>1 Q. Is it a fair statement that you could have 2 said no -- 3 A. Exactly. 4 Q. -- on hiring any of the females who 5 currently work there? 6 A. That's correct. 7 Q. In the case of Lisa McNamee, did she get 8 additional duties after Ms. McCollum was 9 terminated and after you had a chance to 10 evaluate her job performance? 11 A. Yes. She basically performed the role of 12 the accounting person for several weeks, 13 and then her ability -- it was apparent 14 that she could move further in the role, 15 and so we moved her into the role of 16 accounting manager after observing her 17 efforts during this period after 18 Ms. McCollum was terminated. 19 Q. In fact, I think you gave Ms. McNamee a 20 raise after you had an opportunity to 21 evaluate her job performance in her new 22 role; is that correct? 23 A. That's correct.</p>
Page 118	Page 120
<p>1 MR. TRAWICK: I'll be happy to do 2 that. I have a couple of 3 questions. 4 EXAMINATION 5 BY MR. TRAWICK: 6 Q. Lisa McNamee is obviously female; is that 7 correct? 8 A. That's correct. 9 Q. And what is her race or ethnicity? Is she 10 Korean? 11 A. She's Korean. 12 Q. And Susan Seeber. Susan's obviously a 13 female? 14 A. That's correct. 15 Q. And I believe you hired Lisa and Susan; is 16 that correct? 17 A. That's correct. 18 Q. The females that currently work at Amtren, 19 did you hire them? And I'm talking about 20 full time. 21 A. Yes. Full time, yes. If I didn't hire, I 22 was in on the hiring process definitely and 23 on the approval process, yes.</p>	<p>1 Q. Has Susan received a raise since she's been 2 employed? 3 A. Yes. She -- I think her starting pay was 4 around 40,000, and she's subsequently at 5 50,000 per year now. 6 Q. Let me ask you about this cancellation of 7 Amtren's credit card processor. You were 8 present during Ms. McCollum's deposition, 9 correct? 10 A. Yes, sir. 11 Q. Ms. McCollum seems to blame that on you. 12 Do you recall that testimony? 13 A. Yes. 14 Q. Tell me about how Amtren's credit card 15 processor got canceled. 16 A. The merchant agreement account was 17 terminated over lack of payment of \$118. I 18 can't remember the exact amount. 19 The notification was submitted to 20 Amtren. I had never been made aware of 21 that notification. There is, apparently, a 22 time frame to respond to it. We missed 23 that time frame, and Chase Manhattan</p>

Page 121

1 terminated our agreement.

2 This termination resulted in us never
3 being able to receive -- use a Visa or
4 MasterCard as a corporation again. It's
5 actually, from what I understand, a
6 permanent blackball. Subsequently we used
7 a third party, Pay Pal, and they -- due
8 diligence was used to even use our services
9 because of this original termination.

10 The reason for the termination --
11 Ms. McCollum's testimony was that we had
12 limited the use -- I believe put limits on
13 the use of an account or something. The
14 basis of the mistake she made was that if
15 we just provided them the \$118 in a timely
16 manner or allowed them to -- access to -- I
17 believe that may have been a back charge --
18 then the agreement would have stood. I was
19 never made aware of that, you know, in any
20 way, form, or fashion. At that time we
21 had -- I was informed that we needed to
22 change credit card accounts for other
23 purposes. So it was timed during a time

Page 122

1 that we were pursuing other credit card
2 accounts, so I was unaware of the
3 termination.

4 Q. Ms. McCollum testified or refused to admit
5 that this is a significant problem for
6 Amtren. How would you characterize this
7 problem?

8 A. It is significant, because every item that
9 we sell on the Internet is sold by credit
10 card. Every purchase, every spare part has
11 to be sold by credit card. In our sales
12 methods of today, I would say credit cards
13 probably would achieve, you know, a quarter
14 of our sales. We subsequently have to use
15 third-party companies to do this now, you
16 know, at a higher rate of commission, I
17 guess, to the merchant account.

18 Q. Ms. McCollum also in her testimony seemed
19 to blame you for the fact that Chase
20 Merchant Services could not deduct this
21 \$118.41 from your bank account. Is that
22 correct?

23 A. No, that's not correct. That's not

Page 123

1 correct. I was unaware of any errors in
2 back charging by Chase. The separation of
3 accounts that Ms. McCollum had testified
4 where we had separated our accounts --
5 Chase Manhattan has an account they can
6 sweep -- apparently, they can deduct money
7 from once they deposit. I was aware we did
8 separate the accounts. I was not aware we
9 did not manage the dollar amount in those
10 accounts to sufficiently satisfy any back
11 charges being generated by Chase
12 Manhattan.

13 Any time a back charge is initiated, a
14 paper document is mailed to the company.
15 There is, I guess, a time frame there that
16 you can respond to the -- that -- you know,
17 the fact that they couldn't back charge. I
18 guess it would be a -- miss a payment.

19 Q. Was it Ms. McCollum's responsibility to
20 insure that this kind of problem didn't
21 happen?

22 A. Yes. In her role, she would have been
23 responsible to make sure there was timely

Page 124

1 payment of the back charges.

2 Q. Would notices to the company have gone to
3 Ms. McCollum?

4 A. No. The notice -- at that time, the notice
5 went to Mr. Fields.

6 Q. Okay.

7 A. Actually, let me clarify that. The notice
8 was directed to her by matter of her
9 responsibility. It wasn't addressed to
10 her. Yes, all notices went to her, but
11 this notice -- this subsequent notice was
12 not addressed to her.

13 Q. Okay. I believe Ms. McCollum testified in
14 her deposition she couldn't refute
15 testimony that she received this notice.
16 It's your understanding that she did
17 receive this notice; is that correct?

18 A. Yes.

19 Q. Did she deny receiving this notice when you
20 talked with her about it?

21 A. I'm not sure. I don't think I discussed it
22 with her. I didn't discuss it with her.

23 At that time, we were unaware of the

Page 125

- 1 magnitude of it. We were aware that we
2 had -- the account had terminated, but we
3 had not discovered that document that we
4 later showed.
- 5 Q. But it was Ms. McCollum's responsibility to
6 insure that there were sufficient funds in
7 Amtren's accounts so that this problem
8 would not have happened; is that right?
- 9 A. Right. Separation of the accounts is her
10 responsibility to manage the funds.
- 11 Q. Would it have been her responsibility to
12 know which bank accounts Chase Merchant
13 Services would have attempted to deduct
14 this from?
- 15 A. Yes.
- 16 Q. I want to direct your attention to
17 Plaintiff's Exhibit 2, page two,
18 paragraph -- or item number one. This
19 document states that Amtren suffered
20 penalties of \$3,008.66. Is that what the
21 document states?
- 22 A. Yes.
- 23 Q. And is it correct that these penalties were

Page 126

- 1 paid by Amtren because of errors of
2 Ms. McCollum?
- 3 A. Yes. She was responsible for making the
4 deposits at that time or the reports.
- 5 There were two errors. One was a
6 reporting error and the other was the
7 timely deposit of the weekly tax
8 withholdings.
- 9 Q. Let me direct your attention to item number
10 two. In response to Mr. Jacobs' questions,
11 you answered questions about Amtren's
12 health insurance. Is that with Blue Cross
13 Blue Shield?
- 14 A. Yes, it is.
- 15 Q. Ms. McCollum in her deposition testified
16 that David Fields' error cost Amtren
17 \$70,000. I believe Mr. Jacobs asked you
18 about errors made by David Fields. Did
19 Mr. Fields' error cost Amtren \$70,000?
- 20 A. No, not in income. Not direct --
21 basically, it did not cause the loss of
22 that money. What it did, basically, was
23 the difference -- the preliminary -- the

Page 127

- 1 costing information for the products at the
2 end of the period showed that we had an
3 additional \$70,000 of income available when
4 we did our preliminary close. At the
5 period when we adjusted everything for
6 final close, the error was picked up. So
7 there was basically a situation of a
8 reporting error is what it amounts to of
9 the preliminary document versus the final
10 document.
- 11 Q. Ms. McCollum also testified she believes
12 Jerry Weisenfeld was hired to replace her.
13 Is that correct?
- 14 A. That is not correct. Mr. Weisenfeld was
15 hired to basically -- the role that he was
16 hired into was a business management role,
17 but it was a business management role that
18 would basically expand our sales base. And
19 at that time we had considered partnering
20 with certain other companies on technology,
21 and it was a position to strategically
22 align some of those partnerships.
23 Technical partnerships, to clarify.

Page 128

- 1 Q. Ms. McCollum also testified regarding a
2 letter which is marked as Defendant's
3 Exhibit 3 to her deposition. Her testimony
4 was something to the effect that in this
5 letter, you praised her accounting
6 abilities. Tell me about this letter
7 that's dated March 30th, 2005.
- 8 A. That letter was a -- it's a letter for
9 renewing our credit with our bank. It's a
10 letter that we attempt to do, if not once,
11 twice a year. Just -- it's a health check
12 to provide to the bank.
- 13 Q. This is a letter for the benefit of the
14 bank?
- 15 A. It is. It is a letter that is a -- it's an
16 information letter is what it is.
- 17 Q. It's not a letter where you're telling
18 Ms. McCollum she's doing a great job?
- 19 A. No. In fact, statements in there are
20 statements that the company is in good
21 shape and that -- at that time, even when I
22 generated the information, I had no reason
23 to suspect the information Ms. McCollum was

Page 129

- 1 providing was anything but true.
- 2 Q. Who was responsible for maintaining custody
- 3 of the hard copies of the checking accounts
- 4 that Amtren received?
- 5 A. Ms. McCollum.
- 6 Q. Did those go missing after she was
- 7 terminated or about the time she was
- 8 terminated?
- 9 Let me strike that and rephrase that.
- 10 After Ms. McCollum was terminated, did
- 11 Amtren attempt to find those hard copies of
- 12 the checking accounts?
- 13 A. Yes. In fact, I looked for several weeks
- 14 prior to terminating Ms. McCollum to try to
- 15 understand our position, and we could not
- 16 find any reconciled check statements or any
- 17 statements in any of our files. We later
- 18 requested from the bank those.
- 19 Q. In response to a question by Mr. Jacobs,
- 20 you testified about the problems and the
- 21 errors committed by Ms. McCollum regarding
- 22 Plextor. Do you recall that testimony?
- 23 A. Yes.

Page 130

- 1 Q. I believe in Ms. McCollum's deposition, she
- 2 testified she could not recall if she was
- 3 present during management meetings where
- 4 this issue was discussed. Was Ms. McCollum
- 5 present when these issues with Plextor were
- 6 discussed?
- 7 A. Yes.
- 8 Q. And were they discussed with her?
- 9 A. Yes.
- 10 Q. Tell me about the company name Padus,
- 11 P-A-D-U-S.
- 12 A. Padus is a critical vendor for us. y
- 13 make the software tool kit we use. It's an
- 14 imbedded portion of our product. They have
- 15 been a major part of our company since the
- 16 beginning. We selected -- their software
- 17 and the software they generate that's
- 18 inside our software has provided tremendous
- 19 benefits because of the technology.
- 20 Q. I believe Ms. McCollum testified in her
- 21 deposition that it was her responsibility
- 22 to insure that Padus was timely paid. Is
- 23 that correct?

Page 131

- 1 A. In fact, we -- there is no -- there is --
- 2 there was a notice from -- I believe it was
- 3 Padus, the second in charge of Padus,
- 4 Elizabeth -- I can't remember her last
- 5 name, Benito or something, that -- the
- 6 issues that had been going on for
- 7 Ms. McCollum when Ms. McCollum was handling
- 8 their account.
- 9 Q. I believe Ms. McCollum in her deposition
- 10 blamed the failure to timely pay Padus on
- 11 cash flow problems. Would you agree with
- 12 that testimony?
- 13 A. No.
- 14 Q. During this period of time, did Amtren have
- 15 a line of credit available to the company?
- 16 A. Let me clarify. Again, there's a series of
- 17 events that led to the depletion of that
- 18 amount of money. So backing up to --
- 19 Q. The depletion of the amount of money in
- 20 Amtren's checking accounts?
- 21 A. Well, the line of credit. In other words,
- 22 the -- under Ms. McCollum's management, our
- 23 line -- at the beginning of -- I would say

Page 132

- 1 maybe at the end of 2004, our line of
- 2 credit was -- in fact, I don't think we had
- 3 much money borrowed on our line of credit,
- 4 and we had sufficient cash. During the
- 5 periods of November, December, January,
- 6 February, March -- December of '04 and
- 7 January, February, March '05, the moneys
- 8 were basically expended and our line of
- 9 credit was drawn on maximum. In fact, upon
- 10 Ms. McCollum's departure, I had to seek
- 11 immediate -- an immediate loan of \$200,000
- 12 to pay down the vendors that had been aged
- 13 out, you know, aged out meaning that had
- 14 been -- that hadn't been paid. I'm not
- 15 sure of the exact amount. I believe it was
- 16 about 200,000, because the credit -- they
- 17 were basically one by one threatening to
- 18 cut off our credit.
- 19 Q. Is it correct that Padus is an important
- 20 vendor that Amtren buys things from?
- 21 A. The loss of the license from Padus would
- 22 shut us down because what we would have to
- 23 do is -- there's no quick way to engineer

Page 133

1 another software package. You would
2 literally be -- if they terminated their
3 license, we would have to stop shipping
4 product immediately.

5 Q. So is it fair to say that it was essential
6 for Amtren's continued operation to keep
7 Padus paid timely and keep them happy?

8 A. Absolutely. Unlike other items that you
9 ship, you can -- materials are yours and
10 you can ship, when there's a license
11 involved, upon notice that a license is
12 terminated, you can no longer ship your
13 product.

14 MR. TRAWICK: I think that's all I
15 have.

16 *****

17 FURTHER DEPONENT SAITH NOT

18 *****
19
20
21
22
23

Page 135

1 examination of said witness by counsel for the
2 parties set out herein. The reading and signing of
3 same is hereby waived.

4 I further certify that I am neither of kin
5 nor of counsel to the parties to said cause nor in
6 any manner interested in the results thereof.

7 This 17th day of November 2006.
8
9
10

11 Patricia G. Starkie, Registered
12 Diplomate Reporter, CRR, and
13 Commissioner for the State
14 of Alabama at Large
15
16
17
18
19
20
21
22
23

Page 134

1 REPORTER'S CERTIFICATE

2 STATE OF ALABAMA:

3 MONTGOMERY COUNTY:

4 I, Patricia G. Starkie, Registered
5 Diplomate Reporter, CRR, and Commissioner for the
6 State of Alabama at Large, do hereby certify that I
7 reported the deposition of:

8 KIRK LAMBERTH
9 who was first duly sworn by me to speak the truth,
10 the whole truth and nothing but the truth, in the
11 matter of:

12 JANICE McCOLLUM,

13 Plaintiff,

14 vs.

15 AMTREN, INC.,

16 Defendant.

17 In The U.S. District Court

18 For the Middle District of Alabama

19 Northern Division

20 Case Number 05-CV-0326-W

21 on October 15, 2006.

22 The foregoing 133 computer printed pages

23 contain a true and correct transcript of the